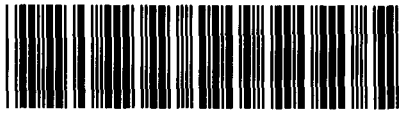

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PUC DOCKET NO. 49723

DIRECT TESTIMONY
OF RUSSELL J. MARUSAK, WITNESS FOR
ONCOR ELECTRIC DELIVERY COMPANY LLC

DIRECT TESTIMONY OF RUSSELL J. MARUSAK

I. POSITION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS:

A. My name is Russell J. Marusak. I am employed by Halff Associates, Inc. ("Halff"), an engineering consulting firm. I hold the position of Environmental Scientist and also serve as a Project Manager. My business address is 1201 North Bowser Road, Richardson, Texas 75081.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL QUALIFICATIONS.

A. Since 1998, when I was first employed as an environmental consultant, I have provided environmental planning and consulting services for electric transmission line projects, transportation projects, land development projects, and other linear projects, including natural gas, sewer, and water pipelines. Since 2002, I have managed or provided technical support for several routing and environmental impact analyses for 345 kV transmission line projects in Texas. For example, I managed three environmental assessments and routing studies for 345 kV Oncor transmission line projects that were included in the Public Utility Commission of Texas's ("Commission") Competitive Renewable Energy Zone ("CREZ") initiative (Docket Nos. 37408, 38140, and 38597), ranging in length from 40 to 160 miles. Since CREZ I have managed several routing and environmental impact analyses for multiple 345 and 138 kV transmission lines. Currently, I am managing the environmental assessment for the proposed Riverton – Sand Lake 345 kV Circuit Addition Transmission Line Project ("Proposed Transmission Line Project"). My educational and professional qualifications are more fully presented in Exhibit RJM-1 attached hereto.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?

A. Yes, I submitted testimony in Commission Docket Nos. 37408, 38140, 38597, 47368, 48095, and 48785.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to introduce, support, sponsor, and describe the *Environmental Assessment for the Proposed Riverton – Sand Lake 345 kV Transmission Line Circuit Addition in Reeves and Ward Counties* ("Environmental Assessment") prepared by Halff at the request of Oncor Electric Delivery Company LLC ("Oncor"). The Environmental Assessment is included as Attachment No. 1 to the Application For A Certificate of Convenience and Necessity ("CCN") For A Proposed 345 kV Transmission Line ("Application"), filed in this docket concurrently with my testimony. The Application, as it may be amended and/or supplemented, will be offered into evidence by Oncor at the hearing. The facts and statements contained in the Environmental Assessment, which I am sponsoring, are true and correct.

III. ENVIRONMENTAL ASSESSMENT

Q. WHY DID HALFF PREPARE THE ENVIRONMENTAL ASSESSMENT?

A. Halff was retained by Oncor to perform and prepare an environmental assessment for the proposed 345 kV circuit addition to the Riverton – Sand Lake transmission line facilities previously approved by the Commission in Docket No. 47368. My responsibility for the Proposed Transmission Line Project included oversight and participation in all elements of the preparation of the Environmental Assessment.

Q. WAS ANYONE OTHER THAN YOU INVOLVED IN THE ENVIRONMENTAL ASSESSMENT PROCESS?

A. Yes. A team of professionals with expertise in different environmental and land use disciplines (soils, physiography, geology, water resources, terrestrial and wetland ecology, community values and resources, aesthetics, cultural resources, and mapping, among others) was assembled by Halff (the "Halff Project Team") and was involved in data

acquisition and environmental assessment for the Proposed Transmission Line Project. Section 6.0 of the Environmental Assessment presents a list of the primary preparers of the document.

Q. WHAT DOES THE ENVIRONMENTAL ASSESSMENT ADDRESS?

A. The Environmental Assessment provides a detailed description of the data gathered and analyzed by Halff in association with the Proposed Transmission Line Project. Because the Proposed Transmission Line Project would use the vacant circuit position on the transmission line facilities previously approved by the Commission in Docket No. 47368, Halff did not conduct an alternative routing analysis, as that analysis effectively already occurred in Docket No. 47268. Halff compiled the requisite environmental and land use data for the single route filed in this Application.

Q. PLEASE DESCRIBE THE OBJECTIVES OF THE ENVIRONMENTAL ASSESSMENT.

A. The objectives of the Environmental Assessment were to evaluate the transmission line route for the Proposed Transmission Line Project. The approach taken by Halff consisted of a series of tasks designed to address the requirements of Section 37.056(c)(4)(A)–(D) of the Texas Utilities Code, 16 Texas Administrative Code § 25.101(b)(3)(B), including the Commission's policy of prudent avoidance, and the CCN application form requirements (including but not limited to Question Nos. 9-10 and 17-29). The tasks included scoping and study area delineation, data collection, constraints mapping, and route delineation. True and correct copies of Section 37.056 of the Texas Utilities Code and 16 Texas Administrative Code § 25.101 are attached to my direct testimony as Exhibits RJM-2 and RJM-3, respectively.

Q. WHAT PROCESS DID HALFF UTILIZE TO IDENTIFY THE ROUTE FOR THE PROPOSED TRANSMISSION LINE PROJECT?

A. Using mapping of the right-of-way ("ROW") Oncor acquired for the project, Halff delineated a study area, gathered data regarding the study area, and mapped constraints within the study area.

The study area for the Proposed Transmission Line Project was identified to include the two Oncor-identified termination points for the Proposed Transmission Line Project: Oncor's Riverton Switch Station (located along County Road 440 and just east of U.S. Highway 285 in Reeves County) and Oncor's Sand Lake Switch Station under construction (located in Ward County approximately 6 miles northeast of Pecos, Texas on the northwestern side of Farm-to-Market 3398). The study area boundaries for the data collection process were defined to include an area proximate to the route for the Proposed Transmission Line Project. Figure 2-1 of the Environmental Assessment sets forth the study area delineated by Halff.

Halff defined an irregularly-shaped study area approximately 35 miles at its longest and approximately 15 miles at its widest. The study area extends in a northwest to southeast manner approximately along the Pecos River and U.S. Highway 285 through the eastern part of Reeves County, the southwestern part of Loving County, and the western part of Ward County. The study area is located north of Interstate Highway 20 and the cities of Pecos and Barstow, and located just south of the community of Orla.

After the study area was defined, the Halff Project Team initiated a variety of data collection activities. One of the data collection activities was the development of a list of local officials and departments and local, state, and federal regulatory agencies to be mailed a consultation letter regarding the Proposed Transmission Line Project. Halff mailed out consultation letters concerning the study area beginning in October 2018. The purpose of the letter was to inform the various officials and agencies

about the project and to give those officials and agencies the opportunity to provide any information they had regarding the project and/or general project area. In response, Halff and Oncor received written and verbal information from various public officials and agencies.

Among other things, data collection activities also consisted of file and record reviews of various regulatory agency databases, published literature, and a variety of available maps, including recent aerial photography, topographical maps from the U.S. Geological Survey, county highway maps, and county appraisal district land parcel boundary maps. During the course of the data collection activities, Halff personnel also conducted numerous reconnaissance surveys of the study area in late 2018.

The information collected during the various data collection activities was utilized to develop an environmental and land use constraints map. Figures 3-1A and 3-1B of the Environmental Assessment depict the environmental and land use constraints compiled by Halff.

Upon completion of the initial data collection activities and constraint mapping process, Halff then delineated the route for the Proposed Transmission Line Project. Halff also compiled a variety of information, including among other things: input received from the various correspondence with public officials and representatives of state and federal agencies; results of the visual reconnaissance surveys of the study area; review of aerial photography; findings of the other various data collection activities; the environmental and land use constraints map; the location of existing development; the location of existing compatible corridors; and apparent property boundaries.

Q. PLEASE DESCRIBE THE PUBLIC INVOLVEMENT PROGRAM UTILIZED FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. The public involvement program included a public participation meeting, consultation with officials from various local, state, and federal regulatory agencies, and information received from other interested parties. The purpose of consulting with public officials and other interested parties was to provide those parties with information regarding the process of transmission line routing and to get input from those parties regarding proposed projects or other land use constraints that could have an impact on the route.

The purposes of the public participation meeting, held on December 11, 2018, at the Reeves County Civic Center in Pecos, Texas, was to: (1) solicit comments and input from residents, landowners, public officials, and other interested parties concerning the Proposed Transmission Line Project; (2) promote a better understanding of the Proposed Transmission Line Project, including the purpose, need, potential benefits, and impacts of the project; (3) inform the public with regard to the procedure, schedule, and decision-making process associated with the Proposed Transmission Line Project; and (4) gather information about the values and concerns of the public and community leaders.

The public involvement program also included consultation and solicitation of information from officials from various local, state and federal agencies in order to give such officials and agencies the opportunity to provide Halff with any information they had regarding the project and/or project area. Information received from the public involvement program was considered and incorporated into Halff's Environmental Assessment for the Proposed Transmission Line Project. Correspondence to and from officials with local, state and federal agencies regarding the Proposed Transmission Line Project is located in Appendix A of the Environmental Assessment.

Q. HOW DID HALFF RECEIVE FEEDBACK FROM ATTENDEES OF THE PUBLIC PARTICIPATION MEETING?

A. Feedback from the public participation meeting was received in two primary ways. First, attendees had one-on-one conversations with personnel from Halff and Oncor, as well as property abstracting contractor JS Land Services, Inc., about their interests in and comments about the project. During the one-on-one conversations, attendees provided comments and clarifications regarding structures and features depicted on the large aerial photographs displayed at the public participation meeting. Attendees were encouraged to locate and mark particular features of interest on the aerial exhibits and at the Geographic Information System ("GIS") computer stations. In that manner, Halff gained insight into particular features of the study area as well as a sense of those values important to the communities potentially impacted by the Proposed Transmission Line Project.

Second, each attendee at the public participation meeting received a questionnaire that solicited comments on the Proposed Transmission Line Project. Of the six people who signed in as attending the public participation meeting, none submitted questionnaires at the meeting. Halff obtained additional information during subsequent reconnaissance surveys following the public participation meeting. That information was considered in the overall identification and evaluation of the route. Section 4.0 of the Environmental Assessment generally discusses the overall public involvement program.

Q. DID HALFF MAKE ANY MODIFICATIONS TO THE PRELIMINARY ALTERNATIVE LINKS BASED ON INPUT RECEIVED FROM THE PUBLIC INVOLVEMENT PROGRAM?

A. No modifications were necessary based on input from the public involvement program.

Q. PLEASE DESCRIBE THE PROCESS FOLLOWED BY HALFF TO EVALUATE THE ROUTE FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. The Halff Project Team evaluated the route based upon the requirements set forth in Section 37.056(c)(4)(A)-(D) of the Texas Utilities Code, 16 Texas Administrative Code § 25.101(b)(3)(B), including the Commission's policy of prudent avoidance, and the Commission's CCN application form requirements. Section 5.0 of the Environmental Assessment describes the evaluation of the route.

Q. BRIEFLY DESCRIBE YOUR UNDERSTANDING OF THE COMMISSION'S POLICY OF PRUDENT AVOIDANCE.

A. 16 Texas Administrative Code § 25.101 defines prudent avoidance as "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort." My understanding of the Commission's policy of prudent avoidance is that the process of routing a proposed transmission line should include consideration of routing options that will reasonably avoid population centers and other locations where people gather. This does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives should be considered. The Proposed Transmission Line Project complies with the Commission's policy of prudent avoidance.

Q. WHAT ARE THE RESULTS OF HALFF'S INVESTIGATIONS REGARDING THE PROPOSED TRANSMISSION LINE PROJECT?

A. Construction of the Proposed Transmission Line Project should not be expected to have a significant impact on existing: physiographic or geologic features/resources; soils and prime farmland; water resources; plant, fish, and wildlife species and ecosystems; natural resources; land use; or cultural resources. Section 5.0 of the Environmental Assessment

describes in detail the results of the route evaluation and any potential impacts of the route.

Q. IS THE ROUTE INCLUDED IN THE APPLICATION CONSISTENT WITH THE APPLICABLE PROVISIONS OF THE TEXAS UTILITIES CODE, THE COMMISSION'S SUBSTANTIVE RULES, AND THE COMMISSION'S CCN APPLICATION FORM?

A. Yes. The Halff Project Team, with expertise in different disciplines (physiography, geology, water resources, soils, vegetation ecology, fish and wildlife ecology, land use/aesthetics, maps/figures/graphics, cultural resources, etc.), delineated and evaluated the route for the Proposed Transmission Line Project based upon environmental and land use conditions present along the potential route, reconnaissance surveys, and the public involvement program. The route included in the Application was evaluated by Halff in accordance with the requirements of Section 37.056(c)(4)(A)-(D) of the Texas Utilities Code, 16 Texas Administrative Code § 25.101, including the Commission's policy of prudent avoidance, and the Commission's CCN application form. The route included in the Application complies with the routing requirements of Section 37.056(c)(4)(A)-(D) of the Texas Utilities Code, 16 Texas Administrative Code § 25.101, including the Commission's policy of prudent avoidance, and the Commission's CCN application form.

IV. CONCLUSION

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Russell J. Marusak who, having been placed under oath by me, did depose as follows:

My name is Russell J. Marusak. I am of legal age and a resident of the State of Texas. The foregoing testimony and exhibit offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.

Russell J. Marusak

SUBSCRIBED AND SWORN TO BEFORE ME on this 18 day of July, 2019.

Notary Public, State of Texas

My Commission Expires
3-13-2023

SHELLY STANCILL ID # 306169-8 NOTARY PUBLIC STATE OF TEXAS EXPIRES 03-13-2023

Russell Marusak

Environmental Scientist

Halff Associates, Inc. (Halff)

Education

M.A., Biology – University of North Texas, 2013

B.S., Wildlife and Fisheries Sciences – Texas A&M University, 1995

Mr. Marusak's principle field of experience has been in the project management, conduct, support services, and production of Environmental Assessments (EAs) for a range of projects including electric transmission lines, pipeline utility projects, and habitat restoration projects. Mr. Marusak also has extensive experience as a regulatory specialist, managing projects that require permitting from the U.S Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (§404).

Since joining the staff at Halff, Mr. Marusak has been involved in a variety of projects in the area of environmental planning services. In addition to involvement in EAs and routing studies for various linear projects, these activities also have included jurisdictional determinations of waters of the United States as regulated under §404, and preparing several §404 permit applications that have received USACE approval. He has also provided testimony regarding §404 requirements in support of state landfill permits in the State of Texas.

Mr. Marusak's representative project experience includes the following:

Riverton—Sand Lake 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 37-42 -mile long 345 kV transmission line project in Loving, Reeves, and Ward Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Tunstill kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 5-6 -mile long 138 kV transmission line project in Reeves County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Balding POD 138 kV Transmission Line Project, Oncor Electric Delivery Company- Project Manager for EA in support of a 2.5-mile single route 138 kV transmission line project in Winkler County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Littman—Philips Andrews 138 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 11-mile long 138 kV transmission line project in Andrews County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

New Bethel 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for ongoing EA and Alternative Routing Analysis for a proposed 12-27 mile long 345 kV transmission line project in Navarro, Henderson, Freestone, and Anderson Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Krum West–Anna 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 40-100 -mile long 345 kV transmission line project in Cooke, Grayson, Collin, and Denton Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Riley–Krum West 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 140-mile long 345 kV transmission line project in Wilbarger, Wichita, Archer, Clay, Jack, Montague, Cooke, Wise, and Denton Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Riley–Bowman 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 38-mile long 345 kV transmission line project in Archer, Wichita, and Wilbarger Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Venus–Liggett 345 kV Transmission Line Project, TXU Electric Delivery Company – Managed and prepared an EA and Alternative Routing Analysis for a proposed 32-mile long 345 kV transmission line project in Dallas, Tarrant, Johnson, and Ellis Counties, Texas. Project

coordinator of a multidisciplinary team of scientists including archaeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impact and select a preferred route for the proposed transmission line project.

Jacksboro Landfill, IESI Texas Landfill, L.P. (IESI) – Managed and prepared necessary documents to acquire §404 nationwide permit for the proposed Jacksboro Landfill in Jack County, Texas. Also responsible for threatened and endangered species coordination at the state and federal level and development of compensatory mitigation plans. Served as expert witness for §404 and threatened and endangered species in support of municipal solid waste landfill permit application pursuant to the Texas Administrative Code.

130 Environmental Park – Managed and prepared necessary documents to acquire §404 nationwide permit for the proposed 130 Environmental Park in Caldwell County, Texas. Also responsible for threatened and endangered species coordination at the state and federal level and development of on-site mitigation plans. Served as expert witness for §404 and threatened and endangered species in support of municipal solid waste landfill permit application pursuant to the Texas Administrative Code.

McCommas Bluff Landfill, City of Dallas – Managed and prepared necessary documents to acquire §404 individual permit for the for the McCommas Bluff Landfill levee expansion. Acquired joint State 401 Water Quality Certification from TCEQ, assisting in coordination of neighborhood meeting for City of Dallas floodplain fill permit requirements, and coordinated mitigative measures with the USFWS regarding potential threatened and endangered species habitat. Also responsible for developing mitigation plan habitat landscape concepts as a support service to the overall civil design. Conducted §404 monitoring and provided necessary documentation to the USACE during construction management phase of project.

Detailed Project Report and Environmental Assessment for the Lake Lewisville Section 1135 Ecosystem Restoration Project, USACE Fort Worth District– Managed and prepared an EA for a proposed habitat restoration project in Denton and Collin County, Texas. The EA and environmental studies included a meeting with the USACE Forth Worth District and United States Fish and Wildlife Service (USFWS) Arlington Field Office to discuss a scope to prepare the EA; incremental cost analysis using USACE software tool; ecological investigations including a USFWS Habitat Evaluation Procedure; general habitat survey; landscape trail design; and hazardous materials investigation. A subsequent Finding of No Significant Impact (FONSI) was issued.

Detailed Project Report and Environmental Assessment for the Middle Brazos River Section 206 Ecosystem Restoration Project,

USACE Fort Worth District – Managed and prepared an EA for a proposed habitat restoration project in the north Bosque River Watershed. The EA and environmental studies included a meeting with the USACE Forth Worth District and United States Fish and Wildlife Service (USFWS) Arlington Field Office to discuss a scope to prepare the Environmental Assessment; ecological investigations including a USFWS Habitat Evaluation Procedure; general habitat survey; and coordinating general civil design.

Multiple Section 10 (§10), §404 and Tree Removal Permits for the West Fork Natural Gas Pipeline, Dale Resources – Managed and prepared necessary documents to acquire §404 and §10 permits for various segments of approximately 20+ miles of natural gas transmission lines in Tarrant County, Texas. Duties included production of lease map and environmental and landuse constraints maps, coordinating with local city governments, and coordinating with land men in selection of final pipeline routes. Duties also included necessary field work and document preparation to receive tree removal permits from local governments where necessary.

North Bosque River Section 206 Aquatic Ecosystem Restoration Project Design, USACE Fort Worth District – Managed preparation of design plans and specifications for a stream restoration and wetland creation project for USACE Fort Worth District. Project was the next progressive phase after the Detailed Project Report and EA, in which conceptual design information is developed and incorporated into a detailed plan and specification package with cost estimates. Responsible for developing habitat landscape concepts and coordinating civil design, and serving as the primary contact with the USACE project review team.

Johnson Creek Recreation Facilities and Ecosystem Recreation Project, USACE Fort Worth District – Assisted in preparation of design plans and specifications for a stream restoration project for USACE Fort Worth District. Project was the next progressive phase after the Feasibility Report and Integrated EA, in which conceptual design information is developed and incorporated into a detailed plan and specification package with cost estimates. Responsible for developing habitat landscape concepts as a support service to the overall civil design.

EPA Compliance Case I-5227, Wharton County – Managed and prepared necessary documents to resolve Environmental Protection Agency (EPA) compliance case regarding a §404 violation in Wharton County, Texas. Conducted after-the-fact jurisdictional determination of waters of the United States, coordinated archaeological investigations, served as primary contact to the EPA compliance case manager on behalf of Wharton County, and prepared EPA-approved compensatory mitigation plan.

Timber Creek Commercial Development, Trammell Crow Company – Managed and prepared necessary documents to acquire §404 individual permit for urban redevelopment project in the City of Dallas. Acquired joint State 401 Water Quality Certification from Texas Commission on Environmental Quality (TCEQ), assisting in coordination of neighborhood meeting for City of Dallas floodplain fill permit requirements, thereby fulfilling TCEQ request for a public meeting. Conducted and prepared tree survey for 1,000+ trees to meet City of Dallas floodplain and tree removal requirements.

Chapman Lake Water Main, Phase II, Dallas Water Utilities – Managed and prepared necessary documents to acquire §404 nationwide permit for the Chapman Lake Water Main, Phase II in Denton and Collin Counties. Responsible for conducting jurisdictional determination of waters of the United States for 30-mile project corridor from Lake Lavon to Lake Lewisville. Prepared joint compensatory mitigation plan necessary for §404 nationwide permit and for acquiring easements across USACE-owned property adjacent to Lake Lavon.

Licenses, Registrations, Seminars

ISA Certified Arborist TX #3252A

8-hour "Interim Regional Supplement to the Corps of Engineers Wetland Delineation: Great Plains Region" Training Course

USACE 1999 Streambank Restoration Seminar

40-Hour OSHA Training, 29 CFR 1910.120

40-hour 1998 Wetland Delineation Training Course

32-hour 1998 Wetland Design and Construction Course

Sec. 37.056. GRANT OR DENIAL OF CERTIFICATE. (a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(c) The commission shall grant each certificate on a nondiscriminatory basis after considering:

(1) the adequacy of existing service;

(2) the need for additional service;

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity;

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and

(F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 295, Sec. 2, eff. June 18, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 949 (H.B. 971), Sec. 2(a), eff. June 17, 2011.

§25.101. Certification Criteria.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Construction and/or extension** -- Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way shall not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction and/or extension is necessary for the service, accommodation, convenience, or safety of the public.

(2) **Generating unit** -- Any electric generating facility. This section does not apply to any generating unit that is less than ten megawatts and is built for experimental purposes only.

(3) **Habitable structures** -- Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to: single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.

(4) **Municipal Power Agency (MPA)** -- Agency or group created under Texas Utilities Code, Chapter 163 – Joint Powers Agencies.

(5) **Municipal Public Entity (MPE)** -- A municipally owned utility (MOU) or a municipal power agency.

(6) **Prudent avoidance** -- The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.

(7) **Tie line** -- A facility to be interconnected to the Electric Reliability Council of Texas (ERCOT) transmission grid by a person, including an electric utility or MPE, that would enable additional power to be imported into or exported out of the ERCOT power grid.

(b) **Certificates of convenience and necessity for new service areas and facilities.** Except for certificates granted under subsection (e) of this section, the commission may grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission shall render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

(1) **Change in service area**. Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated.

(A) Uncontested applications: An application for a certificate under this paragraph shall be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested;

(ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and

(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions shall be approved administratively within 45 days of the filing of the application provided that:

(i) every utility whose certificated service area is affected agrees to the change;
(ii) all customers within the affected area have given prior consent; and
(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(2) **Generation facility.**

(A) In a proceeding involving the purchase of an existing electric generating facility by an electric utility that operates solely outside of ERCOT, the commission shall issue a final order on a certificate for the facility not later than the 181st day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(B) In a proceeding involving a newly constructed generating facility by an electric utility that operates solely outside of ERCOT, the commission shall issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(3) **Electric transmission line.** All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports). This reporting requirement is also applicable to new electric transmission lines to be constructed by an MPE seeking to directly or indirectly construct, install, or extend a transmission facility outside of its applicable boundaries. For an MOU, the applicable boundaries are the municipal boundaries of the municipality that owns the MOU. For an MPA, the applicable boundaries are the municipal boundaries of the public entities participating in the MPA.

(A) Need:

(i) Except as stated below, the following must be met for a transmission line in the ERCOT power region. The applicant must present an economic cost-benefit study that includes an analysis that shows that the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part. Indirect costs and benefits to the transmission system may be included in the cost-benefit study. The commission shall give great weight to such a study if it is conducted by the ERCOT independent system operator. This requirement also does not apply to an application for a transmission line that is necessary to meet state or federal reliability standards, including: a transmission line needed to interconnect a transmission service customer or end-use customer; or needed due to the requirements of any federal, state, county, or municipal government body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air or water quality.

(ii) For a transmission line not addressed by clause (i) of this subparagraph, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:

(I) the recommendation of an organization that meets the requirement of PURA §39.151; and/or

(II) written documentation that the transmission line is needed to interconnect a transmission service customer or an end-use customer.

(B) **Routing:** An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i) whether the routes parallel or utilize existing compatible rights-of-way for electric facilities, including the use of vacant positions on existing multiple-circuit transmission lines;

(ii) whether the routes parallel or utilize other existing compatible rights-of-way, including roads, highways, railroads, or telephone utility rights-of-way;

(iii) whether the routes parallel property lines or other natural or cultural features; and

(iv) whether the routes conform with the policy of prudent avoidance.

(C) Uncontested transmission lines: An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested; and

(ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(D) Projects deemed critical to reliability. Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.

(4) **Tie line**. An application for a tie line must include a study of the tie line by the ERCOT independent system operator. The study shall include, at a minimum, an ERCOT-approved reliability assessment of the proposed tie line. If an independent system operator intends to conduct a study to evaluate a proposed tie line or intends to provide confidential information to another entity to permit the study of a proposed tie line, the independent system operator shall file notice with the commission at least 45 days prior to the commencement of such a study or the provision of such information. This paragraph does not apply to a facility that is in service on December 31, 2014.

(c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:

(1) A contiguous extension of those facilities described in PURA §37.052;

(2) A new electric high voltage switching station, or substation;

(3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies shall proceed without delay or prior approval of the commission and shall be reported to the commission in accordance with §25.83 of this title;

(4) The construction or upgrading of distribution facilities within the electric utility's service area;

(5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs shall be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:

(A) The modification or extension of an existing transmission line solely to provide service to a substation or metering point provided that:

(i) an extension to a substation or metering point does not exceed one mile; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:

(i) no additional right-of-way is required; or

(ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

(C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:

(i) the additional circuit is not greater than 230 kV; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:

(i) the relocation is to be done at the expense of the requesting party; and

(ii) the relocation is solely on a right-of-way provided by the requesting party.

(E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.

(F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality, provided that:

(i) all landowners of property crossed by the electric facilities have given prior written consent; and

(ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

(6) Upgrades to an existing transmission line by an MPE that do not require any additional land, right-of-way, easement, or other property not owned by the MOU;

(7) The construction, installation, or extension of a transmission facility by an MPE that is entirely located not more than 10 miles outside of an MOU's certificated service area that occurs before September 1, 2021; or

(8) A transmission facility by an MOU placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, an MOU was contractually obligated to purchase at least 190 megawatts of capacity.

(d) **Standards of construction and operation.** In determining standard practice, the commission shall be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.

(2) For electric transmission line construction requiring the acquisition of new rights-of-way, electric utilities must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. New construction of structures shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. Utilities may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

(3) Measures shall be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures shall be adapted to the specifics of each project and may include such requirements as:

(A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;

(B) implementation of erosion control measures;

(C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and

(D) returning site to its original contours and grades.

(e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes:

(1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.

(2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.

(3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

(f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.

(g) **Certification forms.** All applications for certificates of convenience and necessity shall be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

(h) **Commission authority**. Nothing in this section is intended to limit the commission's authority to recommend or direct the construction of transmission under PURA §§35.005, 36.008, or 39.203(e).