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**SOAH DOCKET NO. 473-24-17515  
PUC DOCKET NO. 50065**

<b>COMPLAINT OF DOUG AND LINDA</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>CROSSON, BO AND TRISH LEBO,</b>	<b>§</b>	
<b>BRUCE AND ANN AHLHORN, BRIAN</b>	<b>§</b>	<b>OF</b>
<b>TULGA AND MARLENE FRUITTRELL,</b>	<b>§</b>	
<b>DWAYNE AND DENEICE GRIFFIN,</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>RONALD AND VIRGINA ASKEW, ROY</b>	<b>§</b>	
<b>AND BETH JOHNSON AGAINST</b>	<b>§</b>	
<b>PEDERNALES ELECTRIC</b>	<b>§</b>	
<b>COOPERATIVE, INC.</b>	<b>§</b>	

**CROSS-REBUTTAL TESTIMONY**

**OF**

**ALFRED R. HERRERA**

**ON BEHALF OF**

**DOUG AND LINDA CROSSON,  
BO AND TRISH LEBO,  
BRUCE AND ANN AHLHORN,  
BRIAN TULGA AND MARLENE FRUITTRELL,  
DWAYNE AND DENEICE GRIFFIN,  
RONALD AND VIRGINIA ASKEW,  
AND  
ROY AND BETH JOHNSON**

**November 22, 2024**

**SOAH DOCKET NO. 473-24-17515  
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**CROSS-REBUTTAL TESTIMONY OF ALFRED R. HERRERA**

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**CROSS-REBUTTAL TESTIMONY OF ALFRED R. HERRERA**

**I. POSITION AND QUALIFICATIONS**

**Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

**A.** Yes; however, in SOAH Order No. 9, the ALJs sustained the Pedernales Electric Cooperative, Inc.'s (PEC) motion to strike my direct testimony.

**Q. IN LIGHT OF SOAH ORDER NO, 9, COULD YOU PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT EMPLOYMENT POSITION.**

**A.** My name is Alfred R. Herrera. My business address is 4400 Medical Parkway, Austin, Texas 78756. I am principal and founder of Herrera Law & Associates, PLLC (HLA).

**Q. AND PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

**A.** I hold a Bachelor of Arts in American History from George Washington University and a Doctor of Jurisprudence from the University of Texas School of Law. I have focused my legal career in the field of administrative law, and more specifically in the public-utility arena and have over 40 years of experience in legal and legislative matters related to the utility industry (gas, electric, water, wastewater, and telecommunications) and have held positions at the Public Utility Commission of Texas ("PUCT"), the City Attorney's Office for the City of Austin, and served as in-house counsel for a major telecommunications corporation.

1 I am a member of the initial class of attorneys to have been board certified by the Texas  
2 Board of Legal Specialization in Administrative Law in 1989 and I have served as an exam  
3 commissioner for the Texas Board of Legal Specialization and currently I am on the  
4 Administrative Law Advisory Commission for the Texas Board of Legal Specialization. I  
5 am also a member of the Texas Bar College, a professional society of legal scholars who  
6 are leaders in the Texas legal community and champions of legal education. I am a member  
7 of the State Bar of Texas; the Public Utility Law Section of the State Bar; and the Austin  
8 Bar Association.

9 I have litigated numerous utility-related rate matters in the electric, telecommunications,  
10 gas, and water/wastewater industries having served as lead counsel well in excess of two  
11 hundred contested proceedings before the Public Utility Commission of Texas and the  
12 Railroad Commission of Texas. My practice includes appeals to the Texas Courts of  
13 Appeals, including the Texas Supreme Court. I have also been a speaker numerous times  
14 in continuing legal education courses sanctioned by the State Bar of Texas and the  
15 University of Texas Law School CLE program on issues related to municipal law and  
16 utility law regarding electric, water/wastewater, telecommunications, and gas utilities.

17 **II. PURPOSE OF CROSS-REBUTTAL TESTIMONY**

18 **Q. WHAT IS THE PURPOSE OF YOUR CROSS-REBUTTAL TESTIMONY?**

19 **A.** The purpose of my cross-rebuttal testimony is to respond to Mr. John Poole's testimony  
20 filed on behalf of the Staff of the Public Utility Commission of Texas (Commission Staff  
21 or Staff).

22 **Q. WAS YOUR CROSS-REBUTTAL TESTIMONY PREPARED BY YOU OR**  
23 **UNDER YOUR DIRECT SUPERVISION?**

24 **A.** Yes.

1           **III.    CROSS-REBUTTAL TESTIMONY TO MR. POOLE'S TESTIMONY**

2   **Q.    DID MR. POOLE ADDRESS PRELIMINARY ORDER (P.O.) ISSUE NO. 4 IN**  
3   **REACHING HIS CONCLUSION THAT PEC IS NOT REQUIRED TO AMEND**  
4   **ITS CCN TO RELOCATE THE TRANSMISSION LINE AT ISSUE IN THIS**  
5   **CASE?**

6   **A.**    No. Mr. Poole's testimony ignores the very issues he states he is addressing. Mr. Poole  
7           stated that the purpose of his testimony was to address Issues Nos. 4 and 6, set forth in the  
8           Commission's Preliminary Order, which state:

9                   4.    Are there concerns about the proposed relocation of the transmission  
10                   line based on the factors set forth in PURA § 37.056(c) or 16 TAC  
11                   § 25.101(b)(3)?

12                   6.    Is a Certificate of Convenience and Necessity (CCN) amendment  
13                   required for the proposed relocation of the transmission line?

14           First, Mr. Poole's testimony about PURA § 37.056(c) or 16 TAC § 25.101(b)(3)  
15           includes no discussion of the criteria in PURA or in the Commission's applicable  
16           substantive rule regarding the routing of a transmission line. Those criteria go to the heart  
17           of the concerns the Complainants have raised regarding PEC's proposed relocation of its  
18           transmission line, and specifically the factors identified in Rule 25.101(b)(3)(B),<sup>1</sup> which  
19           address routing criteria for PEC's proposed relocation of its transmission line. Those  
20           criteria are:

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

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

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

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

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<sup>1</sup> For ease of reference, I will refer to the Commission's rules as, e.g., "Rule 25.101."

1 **Q. DID MR. POOLE IGNORE OTHER FACTORS SET FORTH IN THE**  
2 **COMMISSION'S PRELIMINARY ORDER IN REACHING HIS CONCLUSION**  
3 **THAT PEC IS NOT REQUIRED TO AMEND ITS CCN TO RELOCATE THE**  
4 **TRANSMISSION LINE AT ISSUE IN THIS CASE?**

5 **A.** Yes. Mr. Poole's testimony gives no weight to what I refer as the "reservation" the  
6 Commission retained to itself in Rule 25.101(c)(5) to "require additional facts or call a  
7 public hearing thereon to determine whether a certificate of convenience and necessity is  
8 required" for what may otherwise be a "routine activity" for which a CCN amendment is  
9 not necessary, and disregards the Commission's statement in Rule 25.101(c)(5), that  
10 "Nothing contained in [subparagraph (D)] should be construed as a limitation of the  
11 commission's authority as set forth in PURA."

12 Instead, Mr. Poole's testimony limits its focus to whether PEC and Driftwood  
13 Development/Driftwood Golf Club reached an agreement for relocation of PEC's  
14 transmission line. Once Mr. Poole concluded that Driftwood Development/Driftwood Golf  
15 Club and PEC reached an agreement to relocate the line at Driftwood  
16 Development/Driftwood Golf Club's expense and on Driftwood Development/Driftwood  
17 Golf Club's land, that ended Mr. Poole's inquiry.

18 **Q. WHAT IS WRONG WITH MR. POOLE'S LIMITED FOCUS IN HIS INQUIRY?**

19 **A.** Taken together, P.O. Issues Nos. 4 and 6, go directly to the concerns the Complainants  
20 raised in their petition and in their respective pre-filed direct testimonies. The  
21 Complainants' pre-filed testimony underscores that "there are concerns about the proposed  
22 relocation of [PEC's] transmission line." And, those concerns are grounded in the factors  
23 expressly noted in Rule 25.101(b)(3) that PEC, and ultimately the Commission, are to take  
24 into account in determining the location of the line, which generally stated asks, "Is the  
25 route of the relocated line 'routed to the extent reasonable to moderate the impact on the  
26 affected community and landowners'?"

27 So, though Mr. Poole cites Rule 25.101(c)(5) to conclude that the facts in this case  
28 satisfy the requirements to relocate PEC's transmission line, Mr. Poole's assessment  
29 appears at best incomplete given the lack of discussion in his testimony regarding the  
30 factors set forth in Rule 25.101(b)(3) and PURA § 37.056(c) for routing of transmission  
31 lines and how those concerns affect the Complainants properties.

1 **Q. IN YOUR OPINION DOES MR. POOLE’S TESTIMONY PROVIDE A SOUND**  
2 **BASIS TO CONCLUDE THAT PEC DOES NOT NEED TO FILE A CCN**  
3 **AMENDMENT?**

4 **A.** No. Given the lack of analysis regarding the criteria set forth in Rule 25.101(b)(3) – and  
5 which Mr. Poole said in his testimony he was addressing – Mr. Poole’s conclusion that the  
6 facts in this case satisfy the requirements to allow PEC to relocate its transmission line  
7 without a CCN amendment is without foundation.

8 This is particularly troublesome given that Rule 25.101(b)(3)(B) expressly states  
9 that even where the utility and landowners whose property a line may cross may agree to  
10 a particular route for the line, that agreement must include agreement by “owners of land  
11 that contains a habitable structure within 300 feet of the centerline of a transmission  
12 project” at issue.

13 Here, the Complainants’ pre-filed direct testimony, and even PEC’s witnesses’  
14 testimonies, establish that the Complainants’ properties are within 300 feet of the proposed  
15 relocation of PEC’s transmission line. And clearly, in light of the Complainants’ petition  
16 and their direct testimonies, the Complainants have not agreed to the route for the proposed  
17 relocation of PEC’s transmission line.

18 **Q. DOES MR. POOLE ADDRESS THE EFFECT OF PROPOSED RELOCATION**  
19 **BEING WITHIN 300 FEET OF HABITABLE STRUCTURES OR WHETHER A**  
20 **CCN AMENDMENT IS REQUIRED?**

21 **A.** Yes; but fails to acknowledge the entire Rule. Rule 25.101(c)(5) states, “Nothing contained  
22 in ... [subparagraph (D)] should be construed as a limitation of the commission’s authority  
23 as set forth in PURA. .... The commission may require additional facts or call a public  
24 hearing thereon to determine whether a certificate of convenience and necessity is  
25 required.”

26 The Complainants’ request in this proceeding falls squarely within the policy  
27 underlying the “reservation” in Rule 25.101(c)(5) that allows the Commission to require  
28 additional facts or call a public hearing to determine whether a certificate of convenience  
29 and necessity is required, notwithstanding that the criteria of Rule 25.101(c)(5)(D) that  
30 otherwise would relieve PEC from needing to file an application for a CCN or an  
31 application to amend its CCN, are on the surface met.



1           Indeed, Commissioner Cobos' comments underscore that the relevant criteria to  
2 consider is not limited to whether Driftwood Development/Driftwood Golf Club and PEC  
3 reached an agreement, but that is the crux of Mr. Poole's analysis. Commissioner Cobos  
4 memorandum highlights that the panoply of factors set forth in Rule 25.101(b)(3) come  
5 into play in determining whether PEC needs to file an amendment to its CCN to relocate  
6 its line:

7           The Commission should refer the proceeding to SOAH to hold a hearing to  
8 determine whether a CCN amendment is required.

9           Despite the CCN exemption's long-standing history in 16 TAC 25.101, the  
10 Commission ALJ only relied on one case as precedent, Docket No.  
11 42444,<sup>27</sup> involving a landowner complaint against a utility's attempt to  
12 relocate a portion of a transmission line.<sup>28</sup> Docket No. 42444 is not  
13 analogous to this proceeding. Docket No. 42444 is distinguishable from this  
14 case, because the prior docket did not involve a landowner with a habitable  
15 structure within 300 feet of the centerline of the relocated transmission line.  
16 Given these distinguishing facts, *I recommend that the Commission*  
17 *exercise its discretion to hold a hearing to determine whether a CCN*  
18 *amendment is required. The CCN exemption process in 16 TAC §*  
19 *25.101(c)(5)(D) is not absolute and does not limit the Commission's broad*  
20 *authority under PURA, especially when a relocated transmission line*  
21 *could impact habitable structures within 300 feet of the centerline.*

22 **Q. MR. POOLE ALSO RAISES THE NOTION THAT WERE THE COMMISSION**  
23 **TO REQUIRE PEC TO FILE AN AMENDMENT TO ITS CCN THIS WOULD**  
24 **FOREVER FORECLOSE A LANDOWNER'S REQUEST TO RELOCATE A**  
25 **LINE. DO YOU AGREE WITH HIS THEORY?**

26 **A.** No. Again, Mr. Poole's focus is too narrow. While the Commission's transmission-line  
27 criteria certainly – and rightly – include the factors of reliability and resiliency regarding  
28 the construction of transmission lines, those are not the only measures to take into account  
29 under the Commission's rules. Among the various other factors is the proximity to  
30 habitable structures.

31           Moreover, the Complainants are not disputing that PEC may need the line to  
32 provide reliable service and make its service resilient to adverse events. Instead, the  
33 Complainants are concerned with the proximity of the line to their properties, a key factor  
34 not only in the Commission's routing criteria, but also in Commissioner Cobos' rationale  
35 for denying PEC's motion for summary decision.

1 **Q. MR. POOLE STATES THAT THE FACT THAT THE PROPOSED RELOCATION**  
2 **OF PEC'S TRANSMISSION LINE WOULD BE WITHIN 300 FEET OF THE**  
3 **COMPLAINANTS' HABITABLE STRUCTURES IS OF NO CONSEQUENCE AS**  
4 **TO WHETHER PEC NEEDS TO APPLY FOR AN AMENDMENT TO ITS CCN.**  
5 **DO YOU AGREE WITH HIS STATEMENT?**

6 **A.** No. Again, Mr. Poole ignores the very P.O. Issue No. 4 he states he is addressing. By  
7 posing the question, "Are there concerns about the proposed relocation of the transmission line  
8 based on the factors set forth in PURA § 37.056(c) or 16 TAC § 25.101(b)(3)?," the Commission  
9 expressly introduced the routing criteria the Commission takes into account in determining the  
10 route a transmission line is to follow, and one of those criteria is the effect the line would have on  
11 nearby habitable structures.

12 The proximity of habitable structures to the new transmission line underscores the  
13 need for the Commission to exercise its duty to ensure the public interest is protected,  
14 notwithstanding the bilateral agreement between Driftwood Development/Driftwood Golf  
15 Club and PEC. The proximity of habitable structures further explains the basis for the  
16 "reservation" in Rule 25.101(c)(5) that the Commission may hold a hearing on whether an  
17 amendment to a CCN is needed.

18 **Q. MR. POOLE TESTIFIED THAT "IN ORDER TO ACCOUNT FOR OTHER**  
19 **PARTIES IMPACTED BY A ROUTINE RELOCAITON OF A TRANSMISSION**  
20 **FACILITY, A RULEMAKING WOULD BE REQUIRED". DO YOU AGREE**  
21 **WITH THIS STATEMENT?**

22 **A.** No; the Complainants' request in this proceeding falls squarely within the policy  
23 underlying the "reservation" in Rule 25.101(c)(5) that allows the Commission to require  
24 additional facts or call a public hearing to determine whether a certificate of convenience  
25 and necessity is required.

26 The "reservation" the Commission kept for itself in Rule 25.101(c)(5) suggests that the  
27 Commission was not intending to provide an absolute right to avoid having to file an  
28 application to amend a holder's CCN even where, for example, the criteria of Rule  
29 25.101(c)(5)(D) are met.

30 The Commission's Issue No. 4 in its P.O. affirmatively incorporates the routing criteria the  
31 Commission applies to select a route for a transmission line.

Commissioner Cobos' memorandum recognizes that Rule 25.101(c)(5)(D) does not hamstring the Commission to considering only "reliability and resiliency" factors, but instead takes into account a key criterion the Commission looks to in deciding a transmission line's route: The CCN exemption process in 16 TAC § 25.101(c)(5)(D) is not absolute and does not limit the Commission's broad authority under PURA, *especially when a relocated transmission line could impact habitable structures within 300 feet of the centerline.*

In Rule 25.101(c)(5)(D) the Commission expressly stated, "Nothing contained in the following subparagraphs [(A) through (F)] should be construed as a limitation on the commission's authority as set forth in PURA," and that [t]he commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required." This case is one that begs for the Commission to exercise its broad authority to require PEC to file an application to amend its CCN, to protect the public interest, generally stated, where new right of way may be needed.

Notwithstanding that PEC and Driftwood Development/Driftwood Golf Club have agreed to relocate the line on the Driftwood Development/Driftwood Golf Club's property, here there are other landowners whose land is not being crossed by the transmission line but who are nonetheless affected by the new transmission line, hence the reservation language the Commission adopted with regard to Subparagraphs (A) through (F) in Rule 25.101(c)(5).

**Q. DO YOU AGREE WITH MR. POOLE THAT THE FACT THAT THE LINE WOULD BE WITHIN 300 FEET OF HABITABLE STRUCTURES HAS NO EFFECT ON WHETHER PEC SHOULD FILE A CCN APPLICATION IN THIS PROCEEDING?**

**A.** No. The relocation of the transmission line proposed by PEC for Driftwood DLC Austin II, LLC (Developer), and in effect also Driftwood Golf Club Development Inc. (Driftwood Golf Club), raises similar if not the same issues that arise in cases where the Commission is asked to decide on the merits of an application seeking to add a new transmission line, particularly as pertains to the path the line should follow. These criteria find their genesis

1 in PURA § 37.056(c) and in Rule 25.101(b)(3), the very statutory and rules provisions the  
2 Commission cited in Issue No. 4 in its Preliminary Order.

3 The very factors of concern to the Commission in the applications it received from  
4 utilities to amend their CCNs to build a new transmission line, are presented by PEC's  
5 proposal to relocate its existing transmission line for Driftwood Development and  
6 Driftwood Golf Club.

7 Were Mr. Poole correct that the only inquiry is whether PEC and Driftwood  
8 Development/Driftwood Golf Club reached agreement on the relocation, the  
9 Commission's "reservation" would be superfluous and of no effect.

10 **IV. CONCLUSION**

11 **Q. PLEASE SUMMARIZE YOUR CROSS-REBUTTAL TESTIMONY AND**  
12 **OPINION.**

13 **A.** Mr. Poole's testimony fails to consider the breadth of criteria the Commission said should  
14 be addressed in this proceeding.

15 PURA § 37.056(c) and Rule 25.101(b)(3) require that the routing criteria in  
16 transmission-line CCN cases be considered in this proceeding. And, the reservation  
17 language in Rule 25.101(c)(5) suggests the Commission was aware and concerned with the  
18 effect line relocations agreed to by the landowner and the utility may have on adjacent  
19 landowners.

20 The reservation language in rule 25.101(c)(5) is consistent the Commission's  
21 policy to facilitate landowner participation in transmission line cases.

22 The notice requirements of rule 25.83(c) are consistent with the Commission's  
23 policy of inviting public participation in transmission-line CCN cases

24 The proposed relocation of the transmission line raises issues that arise in an  
25 application for an amendment to a CCN to build a new transmission line.

1           The Complainants' request in this proceeding falls squarely within the policy  
2           underlying the "reservation" in Rule 25.101(c)(5) that allows the Commission to require  
3           additional facts or call a public hearing to determine whether a certificate of convenience  
4           and necessity is required, notwithstanding that the criteria of Rule 25.101(c)(5)(D)  
5           relieving the need to file an application for a CCN or to amend a CCN, are on the surface  
6           met.

7           Mr. Poole's testimony disregards the Commission's Preliminary Order and more  
8           importantly, ignores the routing criteria he should have considered. Had he done so, he  
9           would have concluded that PEC should be required to apply for an amendment to its CCN  
10          for authority to relocate its transmission line.

11          Finally, in determining whether PEC must file an amendment to its CCN to relocate  
12          its line, if the only inquiry is whether PEC and Driftwood Development/Driftwood Golf  
13          Club reached agreement on the relocation, the Commission's "reservation" language in  
14          Rule 25.101(c)(5) would be superfluous and of no effect.

15   **Q.    DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16   **A.    Yes.**