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Filing Date - 2025-05-07 04:46:27 PM

Control Number - 57263

Item Number - 48

**SOAH DOCKET NO. 473-25-11564
PUC DOCKET NO. 57263**

APPLICATION OF ONCOR ELECTRIC	§	BEFORE THE STATE OFFICE
DELIVERY COMPANY LLC TO	§	
AMEND ITS CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY FOR	§	OF
THE HARTRING-UPLAND 138-KV	§	
TRANSMISSION LINE IN REAGAN	§	
AND UPTON COUNTIES	§	ADMINISTRATIVE HEARINGS

**ONCOR ELECTRIC DELIVERY COMPANY LLC’S STATEMENT REGARDING
CONTINUED DISPUTE AND REQUEST FOR RESOLUTION**

Oncor Electric Delivery Company LLC (“Oncor”) submits this statement regarding its continued dispute and request for resolution and respectfully shows as follows:

I. BACKGROUND

On November 14, 2024, Oncor filed with the Public Utility Commission of Texas (“Commission” or “PUC”) an application (“Application”) to amend its certificate of convenience and necessity (“CCN”) for the Hartring to Upland 138 kilovolt (“kV”) transmission line in Reagan and Upton counties, Texas (the “Project”). Based on the 120-day timeline for Electric Reliability Council of Texas, Inc. (“ERCOT”) reviews,¹ the ERCOT independent review should have been completed and available before or shortly after Oncor filed its Application.² As Oncor was about to file the Application, however, ERCOT notified Oncor it would need to extend its review into January of 2025. Based on this representation from ERCOT and the immediate needs of load customers, Oncor filed this CCN Application expecting to have the ERCOT independent review shortly thereafter.³ On December 31, 2024, ERCOT informed Oncor it would need approximately five-six additional months to complete its review. Given the immediate need to serve customers whose facilities were under construction or already up-and-running, and because the CCN was

¹ ERCOT Nodal Protocol § 3.11.4.6(1)(c) states that, when processing Tier 2 projects, “ERCOT will attempt to complete its independent review for a project in 120 days or less.”

² December 7, 2024, was the 120-day mark from submittal of the project to ERCOT for review; January 1, 2025, was 120 days from the end of ERCOT’s comment period within its review process.

³ See *Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Ranger Camp Switch 345-kV Transmission Tap Line in Mitchell County*, Docket No. 56597, Application Supplement No. 1 at 1 (Jul. 2, 2024).

already pending, Oncor proceeded with the CCN proceeding proving the need for the project independently as permitted by PUCT rules.⁴

The evidence of Project need provided by Oncor in this proceeding includes Oncor witnesses direct testimony of the project need, supplemental direct testimony of the specific customer need, and Oncor's August 9, 2024, submittal ("RPG Submittal") to ERCOT's Regional Planning Group ("RPG") for review.⁵ The RPG Submittal is attached to the Application, which contains statements that: (1) describe the urgent customer need for the Project; (2) relay the delay in ERCOT's independent review timeline at the time of filing; and (3) explain that ERCOT's independent review is not required for the RPG Submittal to be given great weight and for the Application to be approved pursuant to 16 Texas Administrative Code ("TAC") § 25.101(b)(3)(A)(ii)(II).⁶

The sole contested issue in this case is whether Oncor provided sufficient evidence of Project need for the Commission to approve the Application.⁷ Specifically, the issue centers on whether the PUCT rule that states that sufficient need is established by ERCOT's recommendation "and/or" by "written documentation provided by a transmission service provider to ERCOT" means what it says.⁸ Oncor does note that, on the eve of open-meeting consideration, ERCOT has now completed its independent review ("Independent Review") of the RPG Submittal on May 2, 2025. The Independent Review, which includes the Project as ERCOT's recommended option, is attached hereto as Exhibit A. However, the Independent Review has arrived after the close of

⁴ See 16 Tex. Admin. Code ("TAC") § 25.101(b)(3)(A)(ii)(II) (stating that, for reliability projects, the Commission "will give great weight to: (-a-) the recommendation of an organization that meets the requirement of PURA § 39.151; **and/or** (-b-) written documentation provided by a transmission service provider to ERCOT that the transmission line is needed to interconnect transmission service or retail customers.") (emphasis added).

⁵ *Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Hartring-Upland 138-kV Transmission Line in Reagan and Upton Counties*, Docket No. 57263, Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Hartring-Upland 138-kV Transmission Line in Reagan and Upton Counties at Att. No. 4 (Nov. 14, 2024) (providing the *Hartring Upland 138 kV Double-Circuit Line & Benedum 345/138 kV Autotransformer Addition* submitted by Oncor Electric Delivery & LCRA TSC to ERCOT's RPG on August 9, 2024) (hereinafter, "RPG Submittal").

⁶ 16 TAC § 25.101(b)(3)(A)(ii)(II), *supra* note 4.

⁷ *Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Hartring-Upland 138-kV Transmission Line in Reagan and Upton Counties*, Docket No. 57263, SOAH Proposal for Decision at 2 (Apr. 2, 2025) (hereinafter, "SOAH PFD").

⁸ 16 TAC § 25.101(b)(3)(A)(ii)(II), *supra* note 4.

record evidence for this docket,⁹ and the issue contested in this proceeding still requires resolution, as described below.

II. CONTINUING NEED FOR RESOLUTION

Aside from questions such as whether the Commission can, at this point, even take notice of the Independent Review as evidence, a ruling from the Commission is critical as this issue seems highly likely to recur with ERCOT's increasing workload. Resolution would enable quicker customer interconnections by providing clarity on this issue and aiding in the efficient processing of single-route projects proposed in otherwise uncontested CCN proceedings. Procedurally, it is still appropriate for the Commission to rule as to whether ERCOT's recommendation is required to establish sufficient need for a CCN, or whether 16 TAC § 25.101(b)(3)(A)(ii)(II) allows ERCOT's recommendation "and/or" the utility's documentation to suffice.¹⁰

Because Staff has not recommended approval of the Project, the case is still contested. Additionally, if Staff does choose to recommend approval of the Project before this dispute reaches the Commission, the contested issue is excepted from the mootness doctrine because it is capable of repetition, yet evading review, as discussed herein.

The Proposal for Decision ("PFD"), contains the State Office of Administrative Hearings ("SOAH") Administrative Law Judge's ("ALJ's") conclusion that ERCOT's recommendation is not required for approval of the Application, and that Oncor demonstrated sufficient need for the Project irrespective of ERCOT's Independent Review.¹¹ However, Staff ("Staff") of the Commission subsequently filed exceptions to the PFD on April 17, 2025, ("Staff's Exceptions") reiterating its stance that ERCOT's recommendation is required to establish need for the Project.¹²

Staff argues that the Commission cannot make a determination of need before a recommendation from ERCOT is available for review. This issue can only be resolved through a decision as to whether a recommendation from ERCOT is required by PUCT rules for sufficient

⁹ Because the parties presented their arguments through briefs rather than a live hearing, they filed a joint motion to admit evidence that the ALJ granted on March 10, 2025, prior to the initial brief deadline. See Docket No. 57263, SOAH Order No. 4 (Mar. 10, 2025); SOAH PFD at 4-5.

¹⁰ See 16 TAC § 25.101(b)(3)(A)(ii)(II), *supra* note 4.

¹¹ SOAH PFD at 3.

¹² Docket No. 57263, Commission Staff's Exceptions to the Proposal for Decision at 1 (Apr. 17, 2025) (hereinafter, "Staff's Exceptions").

need to be established in a CCN proceeding. As such, ERCOT's completion of the Independent Review does not resolve this dispute, particularly given evidentiary considerations.

Furthermore, even if Staff provides a recommendation for approval now that the Independent Review is available, the issue would not be moot because the same scenario is likely to arise again, and potentially expire prior to full review, in future CCN proceedings. Long-standing Commission precedent establishes that the "capable of repetition, yet evading review" exception to mootness applies to proceedings before the Commission.¹³ Applying this exception to contested administrative proceedings, the Commission has issued rulings when (1) a dispute may evade full litigation due to its limited duration, and (2) there is a reasonable expectation that the complaining party will face the same issue again.¹⁴

Regarding the first prerequisite, Texas courts have held that this exception to mootness is applicable "when the challenged act is of such short duration that the [affected party] cannot obtain review before the issue becomes moot[.]"¹⁵ In this case, the disputed conduct is Staff's assertion that ERCOT's recommendation must be provided for review in the CCN proceeding before need for the project can be established.¹⁶

Today, many large load customer projects require short extensions of transmission lines to provide service. Commonly, ERCOT protocols would require a study at ERCOT. There is no requirement, however, that ERCOT's review must be complete before a CCN is filed. In fact the PUCT rules, as found by the SOAH ALJ in this proceeding, expressly allow a CCN to proceed to

¹³ See *Appeal of Oncor from an Ordinance of the City of Allen*, Docket No. 25429, Order (May 12, 2003); *Appeal of Competitive Wind Generators Regarding the Electric Reliability Council of Texas (ERCOT) Interpretation of the Reactive Power Protocols*, Docket No. 36482, Order No. 10 Acknowledging Withdrawal, Denying Motion to Dismiss Unabating Proceeding and Requiring Proposed Procedural Schedule at 2-3 (Aug. 18, 2009); *Complaint of Consolidated Communications of Fort Bend Company Against Bluecap, Ltd., Capricorn, Ltd. and Freeway Properties, LLC dba Katy Ranch Crossing*, Docket No. 41143, Order on Certified Issue at 2-3 (Apr. 2, 2013).

¹⁴ See Docket No. 36482, Order No. 10 at 2-3; Docket No. 41143, Order on Certified Issue at 2-3.

¹⁵ *Texas A & M Univ.-Kingsville v. Yarbrough*, 347 S.W.3d 289, 290 (Tex. 2011) (quoting *Gen. Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990)).

¹⁶ The ERCOT Nodal Protocols provide for a standard independent review timeline of 120 days for Tier 2 projects such as this. For a procedural schedule to allow for full litigation before SOAH (with discovery, several rounds of testimony, briefing, etc.), the duration of contested cases tends to follow the 180-day statutory deadline for Commission decision. Because ERCOT's standard is to issue its recommendation before the 180-day timeline, the exception to mootness applies because the duration of this disputed action is "too short to be fully litigated prior to its cessation or expiration[.]" *Complaint of Consolidated Communications of Fort Bend Company Against Bluecap, Ltd., Capricorn, Ltd. and Freeway Properties, LLC dba Katy Ranch Crossing*, Docket No. 41143, Order on Certified Issue at 2 (Apr. 2, 2013) (quoting the Commission's Order in *Appeal of Oncor from an Ordinance of the City of Allen*, Docket No. 25429, Order at 3-4 (May 12, 2003)).

the Commission without such a review. As this project demonstrates, ERCOT reviews can at times take more than a year to complete.¹⁷ As this case demonstrates, this type of delay directly impacts customer needs. Given the variability of ERCOT study timelines, this issue will continue to arise in CCN proceedings, highlighting the need for a Commission determination.

The second prerequisite for the applicability of the exception to mootness also applies. Should ERCOT's Independent Review lead to Staff's recommendation of approval, the issue will likely continue to appear in CCN proceedings absent a ruling from the Commission. While the PFD explains that, under Texas case law and Commission precedent, ERCOT's recommendation is not required for a finding of sufficient need,¹⁸ Staff's Exceptions demonstrate its continued opposition to the ALJ's interpretation of PUCT rules.¹⁹ Meanwhile, customer demand in west Texas continues to grow at an exponential pace, creating a timeline that ERCOT's review process cannot always meet. Therefore, it is likely that customer needs and ERCOT delays will conflict again and create a situation such as this, where Staff opposes approval until ERCOT issues its recommendation, leaving customers without needed transmission service.

By providing clarity now, the Commission will mitigate or prevent interested parties from expending unnecessary time and money to re-litigate this issue in future proceedings, thus allowing for more efficient processing and quicker customer connection.²⁰

III. CONCLUSION

Oncor submits this statement and respectfully requests that the Commission issue a decision providing clarity as to whether ERCOT's recommendation is required to establish sufficient evidence of need for approval of applications in CCN proceedings.

¹⁷ See, e.g., *Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Redland Switch-to-Lufkin Switch 345-kV Transmission Line in Angelina County*, Docket No. 55172, *Application of Oncor Electric Delivery Company LLC to Amend Its Certificate of Convenience and Necessity for the Redland Switch-to-Lufkin Switch 345-kV Transmission Line in Angelina County* at Att. Nos. 6 & 7 (Jul. 13, 2023) (including an October 21, 2020, project submittal date and an April 11, 2022, ERCOT independent review publication date).

¹⁸ SOAH PFD at 3 (Apr. 1, 2025).

¹⁹ Staff's Exceptions at 1 (taking issue with SOAH PFD Findings of Fact Nos. 78, 83, 84, 91, and 92; Conclusions of Law Nos. 9, 16, and 17; and Proposed Ordering Paragraphs Nos. 1 and 2).

²⁰ As noted in the supplemental direct testimony of Oncor witness Mr. Jared Gurley, a future interconnecting customer acquired all ROW needed for the Project to allow for more expeditious processing to meet its needed in-service date. See Docket No. 57263, Supplemental Direct Testimony of Jared Gurley at 4, Exh. JG-4 (Feb. 21, 2025).

Respectfully submitted,

By: /s/ Rachael L. Curtin

Jaren A. Taylor
State Bar No. 24059069
Rachael L. Curtin
State Bar No. 24132295

VINSON & ELKINS LLP
Trammell Crow Center
2001 Ross Avenue, Suite 3900
Dallas, Texas 75201-2975
Telephone: (214) 220-7754
Facsimile: (214) 999-7754
jarentaylor@velaw.com
rcurtin@velaw.com

**ATTORNEYS FOR ONCOR ELECTRIC DELIVERY
COMPANY LLC**

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served by email on all parties of record who have provided an email address on this the 7th day of May, 2025, in accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020, in Project No. 50664.

/s/ Stephanie Tenorio
