



Control Number: 50410



Item Number: 106

Addendum StartPage: 0



OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: May 14, 2020

DATE DELIVERED: May 8, 2020

AGENDA ITEM NO.: 11

CAPTION: *Docket No. 50410; SOAH Docket No. 473-20-3470 - Joint Application Of Wind Energy Transmission Texas, LLC And Oncor Electric Delivery Company LLC To Amend Their Certificates Of Convenience And Necessity For The Bearkat Switching Station-To-Longhorn Switching Station 345-Kv Transmission Line In Glasscock And Howard Counties*

DESCRIPTION: Draft Preliminary Order

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Commissioner

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Greg Abbott
Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: David Hrncir
Commission Advising

RE: *Joint Application of Wind Energy Transmission Texas, LLC and Oncor Electric Delivery Company LLC to Amend Their Certificates of Convenience and Necessity for the Bearkat Switching Station-to-Longshore Switching Station 345-kV Transmission Line in Glasscock and Howard Counties, Docket No. 50410, SOAH Docket No. 473-20-3470, Draft Preliminary Order, May 14, 2020 Open Meeting, Item No. 11.*

DATE: May 8, 2020

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the May 14, 2020 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the May 14, 2020 open meeting.

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**PUC DOCKET NO. 50410
SOAH DOCKET NO. 473-20-3470**

JOINT APPLICATION OF WIND	§	PUBLIC UTILITY COMMISSION
ENERGY TRANSMISSION TEXAS,	§	
LLC AND ONCOR ELECTRIC	§	OF TEXAS
DELIVERY COMPANY LLC TO	§	
AMEND THEIR CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY FOR	§	
THE BEARKAT SWITCHING	§	
STATION-TO-LONGSHORE	§	
SWITCHING STATION 345-KV	§	
TRANSMISSION LINE IN	§	
GLASSCOCK AND HOWARD	§	
COUNTIES	§	

DRAFT PRELIMINARY ORDER

On January 14, 2020, Wind Energy Transmission Texas, LLC (WETT) and Oncor Electric Delivery Company LLC filed a joint application to amend their respective certificates of convenience and necessity (CCNs) to construct a new single-circuit 345-kilovolt (kV) transmission line on double-circuit capable structures in Glasscock and Howard counties. The proposed line will connect WETT's existing Bearkat switching station to Oncor's existing Longshore switching station. WETT and Oncor proposed for WETT to build, own, and operate the line from the Bearkat switching station to a halfway point of demarcation that will be designated before the Commission approves a final route in this proceeding; likewise, they proposed for Oncor to build, own, and operate the line from the Longshore switching station to the same halfway point of demarcation. The Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) on April 22, 2020. This preliminary order identifies the issues that must be addressed in this proceeding.

The joint applicants proposed 42 alternative routes for the proposed transmission line, which is designated as the 345-kV Bearkat switching station-to-Longshore switching station transmission line. The total estimated cost for the routes, including associated substation costs, ranges from \$61,698,000 to \$86,248,000. The length of the routes ranges from 29.8 to 44.3 miles. The Commission can approve any route presented in the application. The Commission can also approve any combination of routes or route segments.

The joint applicants provided notice at the time of filing to all cities and neighboring utilities within five miles of the proposed transmission facilities, the county governments of all counties in which any portion of the proposed transmission facilities is located, the Department of Defense Clearinghouse, and directly affected landowners. On February 3, 2020, the joint applicants filed the affidavit of Derrik Berg—a senior environmental planner and project manager for KP Environmental, LLC—regarding notice of the application. A number of local landowners requested protestant or intervenor status in the docket. The Commission administrative law judge (ALJ) ruled on all motions to intervene that were filed before the date that this proceeding was referred to SOAH.

WETT and Oncor were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by May 1, 2020. Both Commission Staff and the joint applicants timely filed a list of issues.

I. Deadline for Decision

The Electric Reliability Council of Texas, Inc. (ERCOT) independent system operator did not deem this transmission line to be critical to the reliability of the ERCOT system. Under 16 Texas Administrative Code (TAC) § 25.101(b), the Commission must render a decision approving or denying the application for a transmission line that ERCOT has not deemed critical to the ERCOT system's reliability within one year of the date that a complete CCN application is filed. Therefore, the Commission must render a decision in this proceeding by January 14, 2021.

II. Conditional Approval

If the Commission determines that it should approve this application and grant the amendment to WETT's and Oncor's respective CCNs, the Commission will limit the authority granted in the order. The authority granted by the order will be limited to a period of seven years from the date the order is signed unless the transmission line is commercially energized before that time. It is reasonable, appropriate, and in the public interest for a CCN order not to be valid indefinitely because it is issued based on the facts known at the time of issuance. The Commission may extend the seven-year time period if WETT and Oncor show good cause. However, Issue 14

below under the issues to be addressed allows the parties to demonstrate that the circumstances of this line are such that the above condition should be changed (e.g., a longer period of time may be more appropriate).

III. Issues to be Addressed

Under Texas Government Code § 2003.049(e), the Commission must provide to the SOAH ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH. After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Application

1. Is the application to amend WETT's and Oncor's respective CCNs adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation? In answering this question, consideration must be given to the number of proposed alternatives, the locations of the proposed transmission line, and any associated proposed transmission facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under consideration and to any analysis and reasoned justification presented for a limited number of alternative routes.¹ A limited number of alternative routes is not in itself a sufficient basis for finding an application inadequate when the facts and circumstances or a reasoned justification demonstrates a reasonable basis for presenting a limited number of alternatives. If an adequate number of routes is not presented in the application, the ALJ must allow WETT and Oncor to amend the application and to provide proper notice to affected landowners; however, if WETT and Oncor choose not to amend the application, then the ALJ may dismiss the case without prejudice.

Notice

2. Did WETT and Oncor provide notice of the application in accordance with 16 TAC § 22.52?

¹ See *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8 at 6 (Nov. 1, 2006).

3. Did WETT and Oncor provide notice of the public meeting in accordance with 16 TAC § 22.52(a)(4)?

Public Input

4. What were the principal concerns expressed in the questionnaire responses received at or after any public meetings held by WETT and Oncor regarding the proposed transmission facilities?

Need

5. Are the proposed transmission facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of the Public Utility Regulatory Act (PURA)² § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition, please address the following issues:
- a. How do the proposed transmission facilities support the reliability and adequacy of the interconnected transmission system?
 - b. Do the proposed transmission facilities facilitate robust wholesale competition?
 - c. What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed transmission facilities?
 - d. Are the proposed transmission facilities needed to interconnect a new transmission service customer?
6. Are the proposed transmission facilities the better option to meet this need when compared to using distribution facilities? If WETT and Oncor are not subject to the unbundling requirements of PURA § 39.051, are the proposed transmission facilities the better option to meet the need when compared to a combination of distributed generation and energy efficiency?

Route

7. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

8. Are there alternative routes or configurations of facilities that would have less of a negative effect on landowners? What would be the incremental cost of those routes or configurations of facilities?
9. If alternative routes or configurations of facilities are considered because of individual landowners' preferences, please address the following issues:
 - a. Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?
 - b. Have the accommodations to landowners diminished the electric efficiency of the line or reliability?

Texas Parks and Wildlife Department

10. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application in accordance with section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:
 - a. What modifications, if any, should be made to the proposed transmission facilities as a result of any recommendations or comments?
 - b. What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
 - c. What other disposition, if any, should be made of any recommendations or comments?
 - d. If any recommendation or comment should not be incorporated in the proposed transmission facilities or the final order, should not be acted on, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.

Permits

11. What permits, licenses, plans, or permission will be required for construction and operation of the proposed transmission facilities? If any alternative route requires permission or an easement from a state or federal agency, please address in detail the following:

- a. What agency is involved, and what prior communications has WETT or Oncor had with the agency regarding the proposed transmission facilities?
- b. Has the agency granted the required permission or easement? If not, when is a decision by the agency expected?
- c. What contingencies are in place if the agency does not grant the required permission or easement or if the process to obtain the required permission or easement would materially affect the estimated cost, proposed design plans, or anticipated timeline to construct the proposed transmission facilities?

Coastal Management Program

12. Is any part of the proposed transmission facilities located within the coastal management program boundary as defined in 31 TAC § 503.1(a)? If so, please address the following issues:
 - a. Do the facilities comply with the goals and applicable policies of the Coastal Management Program in accordance with 16 TAC § 25.102(a)?
 - b. Will the facilities have any direct and significant effects on any of the applicable coastal natural resource areas specified in 31 TAC § 501.3(b)?

Effect on the State's Renewable Energy Goal

13. Will the transmission facilities affect the goal for renewable energy development established in PURA § 39.904(a)?

Limitation of Authority

14. Are the circumstances for this line such that the seven-year limit discussed in section II of this Order should be changed?

Other Issues

15. Will anything occur during construction that will preclude or limit a generator from generating or delivering power or that will adversely affect the reliability of the ERCOT system?
16. What portions of the proposed transmission facilities will WETT and Oncor respectively build, own, or operate? Please identify both the structure that will serve as the dividing point at which ownership of the transmission line changes between WETT and Oncor and the entity that will own the structure.

17. If complete or partial agreement of the parties is reached on a route that uses any modifications to the route segments as noticed in the application, please address the following issues:

- a. Did WETT and Oncor comply with the additional notice requirements of 16 TAC § 22.52(a)(2) and (a)(3)(C)?
- b. Was written consent obtained from landowners directly affected by the proposed modifications to the route segments?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

IV. Proposal for Decision or Proposed Order

To the extent reasonably practicable, the proposal for decision or proposed order arising from this docket should follow the general formatting and structure of the order filed in Docket No. 49302³ on March 2, 2020.

V. Issue Not to be Addressed

The Commission identifies the following issue that need not be addressed in this proceeding for the reasons stated.

1. What is the appropriate compensation for right-of-way or condemnation of property?

The Commission does not have the authority to adjudicate or set the amount of compensation for rights-of-way or for condemnation.

³ *Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Loving County (Kyle Ranch – Quarry Field)*, Docket No. 49302, Order (Mar. 2, 2020).

VI. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that clarification is necessary. As to all other issues, this Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER