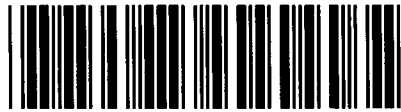




Control Number: 49726



Item Number: 55

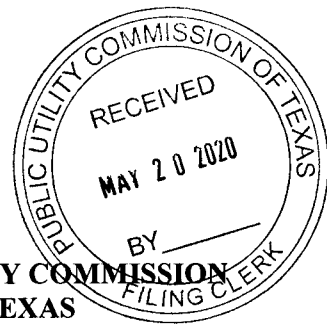
Addendum StartPage: 0

DOCKET NO. 49726

REQUEST OF THE CITY OF
SEYMOUR FOR A DECL. ORDER
REGARDING SERVICE BY TRI-
COUNTY ELEC. COOP.

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§

PUBLIC UTILITY COMMISSION
OF TEXAS



CITY'S MOTION FOR SUMMARY DECISION AND OFFICIAL NOTICE REQUEST

The City of Seymour ("City") hereby moves for summary decision, pursuant to P.U.C. Proc. Rule § 22.182, and pursuant to the invitation to do so by Tri-County Electric Cooperative, Inc. ("TCEC") in Interchange Filer, or "IF," #53.¹ In support the City incorporates by reference its prior filings regarding TCEC's evidentiary hearing request (Interchange Filer, or "IF," #44, #46, & #54), so as not to fully repeat here all of the detail which is already laid out there.

Official notice has already been taken of the Docket No. 57 Order and underlying Examiner's Report (IF #20). In addition, the City requests official notice pursuant to P.U.C. Proc. Rule § 22.222 of: (1) the letter of Texas Electric Service Company ("TESCO," a predecessor to Oncor Electric Delivery Co. LLC) to the Hearing Examiner in Docket No. 57 explaining the stipulation by TCEC's predecessor (B-K Electric Cooperative, Inc., or "B-K") to getting no grandfathered corridor rights within the City's 1976 limits, (2) the relevant 1976 hearing transcript excerpt which includes testimony from TESCO, TCEC's predecessor, and the City, and (3) the Docket No. 57 order on rehearing.²

There is No Genuine Issue as to Any Material Fact

There is no genuine issue as to any material fact in this case. The question in this docket – whether or not TCEC has any grandfathered corridor rights within the City's 1976 limits – is a legal one.

Such a legal question is to be decided based upon the interpretation of Docket No. 57's 1976 Final Order and the underlying Examiner's Report it adopted (already officially noticed, IF #20).

¹ Alternatively, the Administrative Law Judge can proceed with legal briefing of the case as a first phase, under P.U.C. Proc. Rule §§ 22.121 (through a prehearing conference, measures can be adopted for disposition of a proceeding in a fair and efficient manner) and/or 22.127 (certification of legal and policy issues for Commission decision). Those two rules and P.U.C. Proc. Rule § 22.182 on summary disposition motions are all aimed at administrative efficiency, rather than the wasting of the time, effort, and resources of the parties and the relevant state agencies. As set forth in this motion and in the City's filings incorporated herein, an evidentiary hearing is unnecessary and thus would waste the time, effort, and resources of the parties and the relevant state agencies

² Copies of the TESCO letter and hearing transcript excerpt are attached. The Docket No. 57 order on rehearing is available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=57&itemNumber=1>.

This is because certification of a utility service area is governed by the Public Utility Regulatory Act (“PURA”) and the Commission’s orders granting service territory rights and obligations.³ That interpretation of the Docket No. 57 Order and underlying Examiner’s Report is in turn should be made in light of that docket’s hearing transcript, order on rehearing, and the TESCO letter explaining the TCEC predecessor’s stipulation to getting no grandfathered corridor rights within the City’s 1976 limits (for which official notice is requested above). And contrary to TCEC’s claims regarding its evidentiary hearing request, any City knowledge and information about any post-1976 TCEC extension of service inside those limits is legally irrelevant, i.e., may not be considered.⁴

Because no other information beyond that which is either already or can be officially noticed is necessary to decide the legal question of the interpretation of the 1976 Final Order and the underlying Examiner’s Report on the corridor rights issue, no affidavit is necessary for this motion.

TCEC Has No Grandfathered Corridor Rights Within the City’s 1976 Limits

Based on the 1976 Final Order, the underlying Examiner’s Report, the hearing transcript, the TESCO letter in Docket No. 57, and the 1976 order on rehearing, the City is entitled to a decision in its favor, as a matter of law, on the issue of whether or not TCEC has any grandfathered corridor rights within the City’s 1976 limits, i.e., TCEC has no such rights.

Relevant Docket No. 57 Procedural History

The City-owned electric utility, formerly known as Seymour Power and Light, and B-K, among others, were each granted under what is now Chapter 37 of PURA a certificate of convenience and necessity (“CCN”) for their respective retail service areas by the Order issued in Docket No. 57. That Order adopted (with certain limited amendments) the Findings of Fact and the Conclusions of Law recommended in the underlying Examiner’s Report (Nov. 12, 1976). The 1976 Order, like other CCN orders issued at that time, established the initial certificated retail service areas of a group of utilities, based in large part on agreed or stipulated service areas and rights, with only a few open issues in dispute to be resolved by the Commission.

During the earlier phase of the pendency of the various CCN applications at the Commission, including Docket No. 57, the Commission adopted a rule regarding CCNs. Part of

³ See, e.g., *Appl. of Rio Grande Elec. Coop., Inc. for a Cease and Desist Order Against AEP Tex., Inc.*, PUC Docket No. 47186, Preliminary Order at 4-5 (Sept. 29, 2017).

⁴ *Appl. of Rio Grande Elec. Coop., Inc. for a Cease & Desist Order Against AEP Tex., Inc.*, Docket No. 47186, Prelim. Order esp. at 5 (2017); *Complaint of Rusk County Elec. Coop., Inc. Against TXU Elec. Del. Co. & TXU Power*, Docket No. 30037, Prop. for Dec. esp. at 7-8 (2010) & Order on Reh. esp. Concl. of Law 19 (2010).

that rule addressed the issue of “grandfathered corridor rights” for existing facilities otherwise located in another utility’s service area.

That rule lives on today as P.U.C. Subst. R. § 25.101(e)(3) (which was denominated as Commission Rule 052.02.056(b)(6)(B) in 1976).⁵ That rule provides in relevant part as follows:

For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, . . . unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes: . . .

- (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.

A public evidentiary hearing on the CCN applications in Docket No. 57 was held August 5, 1976. In the portion of that hearing on the unopposed matters, testimony was provided by B-K’s General Manager, by a vice-president of TESCO, and by the City Administrator of Seymour for Seymour Power and Light. They addressed the jointly proposed grant of a triply-certificated service area for those three applicants in the half-mile area outside of the 1976 City limits; the TESCO witness also testified to the fact that TESCO was already providing service inside the City of Seymour.⁶

There was no testimony in that hearing by any witness regarding whether or not B-K served any customers in the City of Seymour. There was also no testimony by B-K’s witness that it wanted certification to anything other than the half-mile triply-certificated area.

⁵ The 1976 version of the rule is available at 1 Tex. Reg. 1746-47 (Jun. 29, 1976).

⁶ Docket No. 57 Hearing Tr. at pp. 31-41. In 1985, the City purchased from TESCO the TESCO distribution lines and service area rights in and near Seymour, such that the service area inside the 1976 City limits TESCO no longer had its grandfathered corridor or other retail service rights, and the triply-certificated half-mile service area around the 1976 City limits became doubly-certificated to just B-K and the City. *Joint Application of City of Seymore [sic] and Texas Electric Service Co. to Amend Certificates and for Approval of a Sale of Facilities*, PUC Docket No. 6303, Order (Sept. 12, 1985), available at http://interchange.puc.texas.gov/Documents/6303_1_794400.PDF.

On September 13, 1976, the Commission heard oral argument in Docket No. 57 and other CCN dockets regarding certain questions that had been raised in certain CCN dockets as to the Commission's authority to grant CCNs to electric utilities for service rights in areas inside of municipal boundaries. At the conclusion of the oral argument, the Commission adopted and announced a statement of policy regarding that issue.

As recounted in the Docket No. 57 Examiner's Report, that statement of policy was: (1) the Commission has authority to issue CCNs to any public utility providing service within an incorporated city with that city's consent, either by express grant or by annexation or incorporation; and (2) the Commission would not endeavor to certificate a utility inside a city where that utility not previously serving within the city and where that city has not consented to future service by the utility.⁷

TESCO then submitted a letter dated September 28, 1976, to the Docket No. 57 Hearings Examiner. That letter specifically called to the Hearings Examiner's attention specific facts regarding certain utility lines lying within or near the municipal boundaries of two cities, Wichita Falls and Seymour. TESCO asked that such specific facts be carefully reviewed to assure that the final certificates issued in Docket No. 57 are consistent with PURA and the Commission's holdings announced after the conclusion of the oral argument on September 13, 1976.

With regard to the specific facts pertaining to the City of Seymour, the TESCO letter states as follows (emphasis added):

Texas Electric Service Company holds the franchise to render electric service in this city. B-K Electric Cooperative, Inc. does not hold a franchise from Seymour. It is Texas Electric's understanding that B-K has no customers nor lines within the municipal boundaries of Seymour, but B-K does have lines which lie within 200 feet of the municipal boundaries. Further, *it is Texas Electric's understanding that B-K does not seek any service areas per se or 400 foot corridor rights within the City of Seymour.*

Under these facts, the certificate issued to B-K should expressly provide that it does not include any service areas within the municipal boundaries of Seymour, and further, that the 400 foot grandfather corridor rights granted to B-K shall not include any such area lying within the municipal boundaries of Seymour.

⁷ Examiner's Report in Docket No. 57 at 3.

TESCO's letter certified that TESCO served it upon all parties to Docket No. 57, including specifically to B-K. After the submission of that TESCO letter, B-K did not respond in Docket No. 57 to the TESCO letter.

In other words, there was a "stipulation between B-K and [TESCO] regarding corridor rights" – in the words of TCEC's own third-party discovery request to other Docket No. 57 parties by which it procured a copy of the TESCO letter.⁸ As set forth in the TESCO letter, which B-K did not correct or disagree with, the grandfathered corridor rights stipulation was that B-K was to have *none* in the 1976 City limits.

The Hearings Examiner subsequently issued the Examiner's Report in Docket No. 57 on November 12, 1976. The Examiner's Report specifically proposed Conclusion of Law No. 2, which stated that: "The certificate of B-K Electric Coop., Inc. for service within the incorporated boundaries of the City of Seymour shall be limited to service of existing customers or points of delivery, as agreed upon by the parties in this case." The Examiner's Report also proposed Ordering Paragraph No. 2: "B-K Electric Coop., Inc. is granted a Certificate of Convenience and Necessity within the incorporated boundaries of the City of Seymour for facilities currently in place and for service of existing customers or points of delivery only."

In turn, the proposed conclusion and proposed ordering paragraph were based upon the explanatory discussion in the Examiner's Report on page 3. That explanatory discussion is in the context of describing the Commission's September 13, 1976, determinations regarding certification of electric cooperatives within incorporated municipalities, which applied to three instances. The first of the three involved B-K and TESCO with respect to the City of Seymour, and in that regard the Examiner's Report stated (emphasis added):

B-K has distribution lines just outside the city limits of the City of Seymour. If B-K were to be certified to a 400-foot corridor off these lines it would result in it having a small service area within the city, although it apparently has never served inside the city. *B-K and TESCO have agreed that the former will not seek full certification of its grandfathered corridor off the lines, but instead would request general area wide certification of the area outside the city limits as shown on Staff Exhibit 2.* This agreement was recommended by the Staff, and the Examiner also recommends such to the Commission.

⁸ TCEC's Notice of Subpoena - AEP Texas, Inc., available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49726&itemNumber=32>.

In other words, both the Commission Staff and the Hearings Examiner specifically recognized, given the TESCO letter with which B-K did not correct or disagree, that there was an agreement between B-K and TESCO that B-K would have no corridor rights in the 1976 City limits. Both Staff and the Examiner expressly recommended approval of that agreement.

The Examiner's proposed conclusion of law and proposed ordering paragraph for B-K are in contrast to the Examiner's proposed conclusion of law and proposed ordering paragraph for Southwest Rural Electric Association. Proposed Conclusion of Law No. 12 stated:

It is within the public convenience and necessity that Southwest Rural Electric Ass'n., Inc. be certificated within the City of Vernon for an area including a 200-foot corridor on either side of its distribution line within the city, pursuant to Section 53 of the [PURA] and Commission Rule .052.02.056 (b)(6)(B).

And proposed Ordering Paragraph No. 10 provided that:

Southwest Rural Electric Ass'n., Inc. is granted a Certificate of Convenience and Necessity within the City of Vernon for an area including a 200-foot corridor on either side of its distribution line within the city, pursuant to Section 53 of the Public Utility Regulatory Act and Commission Rule 052.02.056(b)(6)(B).

Therefore, the Examiner's Report was issued not only against the backdrop of the Commission's July 1976 rule regarding grandfathered corridor rights, but carefully delineated who had them and who did not have them, in accordance with the language of that rule and in light of the B-K and TESCO agreement that B-K would not inside the City's 1976 limits.

B-K did not file exceptions to the Examiner's Report. In other words, it did not disagree with the proposed conclusion of law and the proposed ordering paragraph which limited it only to "service of existing customers or points of delivery" without any corridor rights recognition. Nor did it take exception to the explanatory discussion regarding how B-K was not seeking any grandfathered corridor rights within the 1976 City limits.

The Commission then issued its 1976 Order on December 16, 1976. That order adopted (with certain limited amendments) the findings of fact and the conclusions of law recommended in the underlying Examiner's Report.

The 1976 Order specifically says in its very first sentence that: "The Commission adopts the Findings of Fact and Conclusions of Law recommended by the Examiner, with the below stated amendments, and such are made a part of this Order for all purposes." The Order next amends certain of the Examiner's recommended Findings of Fact and Conclusions of Law on

matters not relevant to B-K (one of those was relevant to the City, but only by recognizing the name it used then, Seymour Power and Light). The Order then includes the ordering paragraphs recommended by the Examiner as modified in light of those specific amendments to the recommended Findings and Conclusions.

For B-K, the 1976 Order adopted, by reference, and without amendment, the Examiner's proposed Conclusion of Law No. 2. It also adopted for B-K the Examiner's recommended Ordering Paragraph No. 2, word-for-word.

The latter ordering paragraph, both as proposed and as adopted by the Commission's 1976 Order, expressly stated that B-K was certificated "for facilities currently in place and for service of existing customers or points of delivery only" (emphasis added). In contrast, the 1976 Order not only adopted by reference the proposed Conclusion of Law No. 12 for Southwest Rural Electric Association, it also adopted word-for-word the proposed Ordering Paragraph No. 10 which certificated Southwest Rural Electric Ass'n., Inc. within the City of Vernon for an area including a 200-foot corridor on either side of its distribution line within the city, pursuant to PURA and the Commission's 1976 CCN rule. In other words, the 1976 Order expressly delineated that Southwest Rural Electric Association was granted corridor rights, consistent with the Examiner's Report, and carried forward the Examiner's Report language that did not include any corridor rights for B-K inside of the City's 1976 limits.

Two parties in Docket No. 57 filed motions for rehearing to that 1976 Order, which were denied by the Commission in its Order regarding rehearing on January 27, 1977. Neither of those parties seeking rehearing was Seymour Power and Light or B-K.

Therefore, under the literal text of the Order and the underlying Examiner's Report, B-K's/TCEC's right to serve customers in the 1976 City limits was expressly limited to those customers who were in the 1976 City limits and receiving service from B-K on August 5, 1976.

Legal Arguments

Rules of Construction

Administrative rules must be interpreted, like statutes, under traditional principles of statutory construction.⁹ In the absence of a statutory or regulatory definition, one is to look to terms' common usage and their plain and ordinary meaning "unless the statute or regulation

⁹ *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 438 (Tex. 2011).

clearly indicates the drafter's intent to use the language in some other sense.”¹⁰ Additionally, when possible, courts are to construe an order in a way that gives each provision meaning,¹¹ and avoid constructions which lead to absurd conclusions or consequences.¹²

When construing an administrative agency order, courts apply the same rules used to interpret statutes, and the “ultimate object of construction” is to ascertain the intent of the administrative body.¹³ The same rules of statutory interpretation generally apply to the interpretation of agency administrative orders.¹⁴

If a general provision conflicts with a specific provision, then the provisions shall be construed in such a way that effect is given to both the specific and the general provisions.¹⁵ However, if two provisions have an irreconcilable conflict, the more specific provision controls over the more general provision.¹⁶ Administrative agency orders should be construed to ascertain and give effect to the intent reflected within the order, and should be given a “reasonable and harmonious construction of the whole” order.¹⁷

When the foregoing rules of construction are applied to the 1976 Order and to Substantive Rule 25.101(e):

(1) the ordinary meaning of the terms in the Order's literal text limited the B-K certificate rights within the 1976 city limits *only* to the facilities and *only* to any customers at that time

¹⁰ *State v. Kost*, 785 S.W.2d 936, 939 (Tex. App.—San Antonio 1990, pet. ref'd); Tex. Gov't Code § 311.011 (under the Code Construction Act, words and phrases “shall be read in context and construed according to the rules of grammar and common usage” unless they have acquired a technical or particular meaning, whether by legislative definition or otherwise); *id.* § 312.002 (for construction of civil statutes, “words shall be given their ordinary meaning” unless connected with and used with reference to a particular trade or subject matter or is used as a word of art).

¹¹ *Kourosh Hemyari v. Stephens*, 355 S.W.3d 623, 626 (Tex. 2011).

¹² *See Dovalina v. Albert*, 409 S.W.2d 616, 621 (Tex. Civ. App.—Amarillo 1966, writ ref'd n.r.e.).

¹³ *Office of Pub. Util. Counsel v. Texas-New Mexico Power Co.*, 334 S.W.3d 446, 450 (Tex. App. — Austin 2011, pet. denied).

¹⁴ *State v. Bilbo*, 378 S.W.2d 871, 876 (Tex. 1964).

¹⁵ Tex. Gov't Code § 311.026.

¹⁶ *State v. Wiesman*, 269 S.W.3d 769, 773 (Tex. App. — Austin 2008, no pet.), *citing* Tex. Gov't Code § 311.026.

¹⁷ *All Star Sheet Metal and Roofing, Inc. v. Tex. Dept. of Ins.*, 935 S.W.2d 186, 188-89 (Tex. App. — Austin 1996, no writ).

without any grandfather corridor rights (due to the B-K agreement with TESCO for which the Commission Staff and Hearing Examiner recommended approval); and

(2) the ordinary meaning of the specific “unless otherwise” provisions in the Rule prevents the grandfather corridor rights set out in the Rule from conflicting with the 1976 Order.

Textual Analysis of the 1976 Order

The 1976 Order expressly “adopts the Findings of Fact and Conclusions of Law recommended by the Examiner” subject to amendments not applicable to B-K, and makes them “a part of this Order for all purposes.” For B-K, the Order adopted, without amendment, the Examiner’s recommended Ordering Paragraph No. 2 stating that: “[B-K] is granted a [CCN] within the incorporated boundaries of the City of Seymour for facilities currently in place and for service of existing customers or points of delivery only.”

The ordering paragraph’s literal text is that, within the City limits, B-K has a CCN “for facilities currently in place and for service of existing customers or points of delivery *only*” (emphasis added.) It does *not* say B-K is “certificated within the incorporated limits of the [City] for an area including a 200-foot corridor on either side of all distribution lines within the city.” Had the Commission intended to grant B-K any grandfather corridor rights, it certainly knew how to say so – as evident from the 1976 Order itself. Ordering Paragraph No. 10 provided:

Southwest Rural Electric Ass’n., Inc. is granted a Certificate of Convenience and Necessity within the City of Vernon for an area including a 200-foot corridor on either side of its distribution line within the city, pursuant to Section 53 of the Public Utility Regulatory Act and Commission Rule 052.02.056(b)(6)(B).

As a result, even without setting forth a statement of the B-K stipulation in the Order’s language, the rights granted to B-K in the ordering paragraph are limited to the existing lines and existing customers in the 1976 City limits without any grandfather corridor rights consistent with the B-K stipulation. In other words, the 1976 Order did not have to, in the body of the order, recount B-K’s agreement with TESCO or recount the statements in the Examiner’s Report regarding the B-K and TESCO agreement, it just had to not grant B-K any corridor rights within the 1976 City limits. And that is exactly what the Order did – no B-K grandfathered corridor rights were granted.

Textual Analysis of Substantive Rule 25.101(e)

P.U.C. Subst. R. § 25.101(e), formerly Commission Rule 052.02.056(b)(6)(B), provides with respect to CCNs for existing service areas and facilities (emphasis added):

For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, . . . *unless found by the commission to be otherwise*, the following provisions shall prevail for certification purposes: . . .

- (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.

As a result of the 1976 Order's specific limitation of the B-K rights to the then-existing lines and then-existing customers "only," the P.U.C. Subst. R. § 25.101(e) and (e)(3) respective phrases "unless found by the commission to be otherwise" and "unless otherwise found by the commission" come into play. Therefore, the grandfather corridor language of that Rule is negated for purposes of the respective retail service rights of the City and TCEC.

This gives the Rule and the 1976 Order a reasonable and harmonious construction. In other words, this construction avoids creating a conflict between the two, and thus avoids creation of absurd conclusions or consequences.

Conclusion and Prayer

It is administratively efficient to decide the legal issue based on the Docket No. 57 documents (already or to be officially noticed). Based on the literal text of those documents and the rules of construction regarding agency orders and rules, TCEC has no grandfather corridor rights within the City's 1976 limits.

Accordingly, the City respectfully prays that the Commission: (1) take official notice of Docket No. 57's hearing transcript, order on rehearing, and TESCO letter explaining B-K's stipulation to getting no grandfathered corridor rights within the City's 1976 limits; and (2) grant this motion for summary decision, and thereby declare that TCEC, as B-K's successor, has no grandfathered corridor rights within the City's 1976 limits.

Respectfully submitted,

By: /s/ Thomas K. Anson
Thomas K. Anson (SBN 01268200)
tom.anson@clarkhillstrasburger.com
Clark Hill Strasburger
720 Brazos St. # 700, Austin, TX 78701
512-499-3600 / 512-536-5718 (fax)

LEGAL COUNSEL TO THE AUTHORIZED
REPRESENTATIVE OF THE REQUESTOR

CERTIFICATE OF SERVICE

I certify I served the foregoing on all parties by email this May 20, 2020.

/s/ Thomas K. Anson
Thomas K. Anson

CANNEY, HANGER, GOOCH, CRAVENS & MUNN
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
FORT WORTH, TEXAS 76102

H. CARTER BURDETTE

332-7561
AC 517

DALLAS TELEPHONE
262-0669

September 28, 1976

Honorable Philip F. Ricketts
Hearings Examiner
Public Utility Commission of Texas
7800 Shoal Creek Boulevard, Suite 450N
Austin, Texas 78757

Re: Docket No. 57

Dear Mr. Ricketts:

On September 13, 1976, the Commission heard oral argument in the subject docket, among others, regarding certain questions as to the Commission's authority to grant certificates to electric utilities for service rights in areas inside of municipal boundaries. As you know, a final Examiner's Report has not been issued in the subject docket, pending the Commission's determination of these questions.

In some instances the applications and evidence at hearing in the subject docket indicate that applicants have not requested service areas or service corridors within city limits, even where that applicant may have been serving a few customers within the city boundaries as of September 1, 1975. Moreover, at the September 13th hearing, the Commission held that it would not grant service rights to an applicant inside municipal boundaries unless the city had granted a franchise to the applicant or otherwise manifested its approval of service by that applicant within the municipal boundaries.

In light of the Commission's determinations, Texas Electric Service Company would respectfully call to your attention the specific facts regarding certain utility lines lying within or near the municipal boundaries of several cities or towns involved in the subject docket. Texas Electric Service Company

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BY *hB*

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PUBLIC UTILITY COMMISSION
AUSTIN, TEXAS

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Honorable Philip F. Ricketts

September 28, 1976

believes that these facts should be carefully reviewed to assure that the final certificates issued are consistent with the Public Utility Regulatory Act and the Commission's holdings announced on September 13th.

Wichita Falls: Texas Electric Service Company holds a franchise to render electric service in this city. At the time of the hearing in this docket, J-A-C Electric Cooperative, Inc. held no franchise to render service in the City, although J-A-C was serving a few customers in an area adjacent to Arrowhead Lake, which area had been annexed by the City of Wichita Falls. It is Texas Electric's understanding that, since the date of the hearing in this docket, the City of Wichita Falls has granted to J-A-C a limited franchise, authorizing J-A-C to render service within an area lying within 200 feet of its service lines in the Arrowhead Lake area of the City. It is Texas Electric's understanding that J-A-C seeks no service area rights within the City of Wichita Falls, save and except those areas specifically delineated by its recently obtained franchise from the City.

Under these facts, the certificate issued to J-A-C should expressly provide that it shall have no service areas lying within the municipal boundaries of Wichita Falls, nor shall its 400 foot corridor rights include any areas lying within Wichita Falls, save and except those corridor areas delineated by the recently obtained franchise from the City of Wichita Falls. In such corridors J-A-C would be dually certified with Texas Electric.

Seymour: Texas Electric Service Company holds the franchise to render electric service in this city. B-K Electric Cooperative, Inc. does not hold a franchise from Seymour. It is Texas Electric's understanding that B-K has no customers nor lines within the municipal boundaries of Seymour, but B-K does have lines which lie within 200 feet of the municipal boundaries. Further, it is Texas Electric's understanding that B-K does not seek any service areas per se or 400 foot corridor rights within the City of Seymour.

Page 3
Honorable Philip F. Ricketts
September 28, 1976

Under these facts, the certificate issued to B-K should expressly provide that it does not include any service areas within the municipal boundaries of Seymour, and further, that the 400 foot grandfather corridor rights granted to B-K shall not include any such area lying within the municipal boundaries of Seymour.

This shall certify that a copy of this letter has been served upon each of the electric utilities who are parties to this docket and whose lines are discussed above, by mailing said copy postage prepaid on this date, to their respective addresses, as shown below.

Yours very truly,

CANTEY, HANGER, GOOCH, MUNN & COLLINS

By


H. Carter Burdette

1800 First National Building
Fort Worth, Texas 76102

ATTORNEYS FOR TEXAS ELECTRIC
SERVICE COMPANY

HCB/msj

cc: B-K Electric Co-op. Ass'n
3005 East Avenue B
Drawer "N"
Muleshoe, Texas 79347

J-A-C Electric Cooperative, Inc.
P. O. Drawer B
Bluegrove, Texas 76352

Mrs. Martha Terry
Public Utility Commission of Texas
7900 Shoal Creek Boulevard, Suite 450N
Austin, Texas 78757

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS

AUSTIN, TEXAS

IN THE MATTER OF APPLICATIONS OF §
B-K ELECTRIC COOPERATIVE, BRAZOS POWER §
ELECTRIC COOPERATIVE, COMMUNITY PUBLIC §
SERVICE COMPANY, DICKENS COUNTY ELECTRIC §
COOPERATIVE, CITY OF ELECTRA, ERATH COUNTY §
ELECTRIC COOPERATIVE, FORT BELKNAP, GATE §
CITY ELECTRIC COOPERATIVE, HARMON ELECTRIC §
COOPERATIVE, J-A-C ELECTRIC COOPERATIVE, § DOCKET
MIDWEST ELECTRIC COOPERATIVE, SEYMOUR § NUMBER:
POWER AND LIGHT, SOUTHWEST RURAL ELECTRIC §
ASSOCIATION, STAMFORD ELECTRIC COOPERATIVE, § 57
TEXAS ELECTRIC SERVICE COMPANY, TEXAS POWER §
AND LIGHT COMPANY, TRI-COUNTY ELECTRIC §
COOPERATIVE, CITY OF BOERNE, WEST TEXAS §
UTILITIES COMPANY, WESTERN FARMERS ELECTRIC §
COOPERATIVE, WISE ELECTRIC COOPERATIVE FOR §
CERTIFICATES OF CONVENIENCE AND NECESSITY §
WITHIN THE COUNTIES OF ARCHER, BAYLOR, CLAY, §
FOARD, HARDEMAN, HASKELL, JACK, KNOX, STONE- §
WALL, THROCKMORTON, YOUNG, WICHITA AND §
WILBARGER. §

PUBLIC HEARING ON APPLICATIONS

BE IT REMEMBERED that the above-entitled matters
came on for hearing on the 5th day of August, 1976 at
9:00 a.m. in the Hearing Room at 7800 Shoal Creek Boule-
vard, Austin, Texas before the Public Utility Commission
of Texas, the HONORABLE PHIL RICKETTS, Hearing Examiner
presiding, and the following proceedings were reported
by Hickman Reporting Service, 504 Travis Building, 205
West Ninth, Austin, **HICKMAN REPORTING SERVICE**
Texas 78701. **THE QUALITY REPORTERS**
Austin, Texas 476-5363

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1 MR. BISHOP: The Staff would also ask
2 that the Examiner take official notice of the various
3 applications and filings that have been made with the
4 Commission that are in the official Commission files.

5 MR. RICKETTS: Pertaining to the
6 Certificates of Convenience.

7 MR. BISHOP: Right, for the parties to
8 this proceeding.

9 MR. RICKETTS: If there is no objection,
10 I will take official notice of all filings by the
11 parties to this hearing concerning their applications
12 for Certificates of Convenience and Necessity.

13 Q Mr. Lee, as to what we have described or
14 you have described as the uncontested areas on these
15 various exhibits, Staff Exhibits 1 through 13, do you
16 have any recommendations as to those areas, with the
17 exception of this triple-certified area around the
18 City of Seymour?

19 A Yes. For those uncontested areas, as I
20 mentioned, as I was going through the maps, the Staff
21 will recommend that they receive Certificates of
22 Convenience and Necessity on Section 54 of the Act
23 for the boundaries as shown and also for the facilities
24 in place as of September 1, 1975, that they receive
25 Certificates for generation, transmission and



1 distribution facilities in place as of that date on
2 Section 53 of the Act.

3 Q And also under construction?

4 A And also under construction.

5 MR. BISHOP: I will pass the witness.

6 MR. RICKETTS: Are there any further
7 questions of this witness by any party?

8 MR. BURDETTE: Yes, Mr. Examiner.

9 MR. RICKETTS: Mr. Burdette.

10
11 CROSS EXAMINATION

12 BY MR. BURDETTE

13 Q Mr. Lee, does your Staff recommendation in-
14 clude a recommendation that certificates under Section
15 53 include lines in place on September 1, 1973 and
16 also a 400 foot corridor around those lines, pursuant
17 to Commission Rule 56?

18 A That is correct.

19 Q To the extent that that recommendation includes
20 any lines inside the City limits of any incorporated
21 or unincorporated town to which a party might be pro-
22 hibited from serving by Article 15-28-B, does your
23 recommendation constitute merely an engineering recom-
24 mendation?

25 A Merely an engineering recommendation only.

Q And it does not constitute a recommendation

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1 with regard to the status of the law or the power of the
2 Commission to grant such a certificate?

3 A None whatsoever. That's correct.

4 MR. BURDETTE: I have no further
5 questions.

6 MR. RICKETTS: Are there any further
7 questions of this witness?

8 (No response.)

9 MR. RICKETTS: You may step down.

10 (The witness, Mr. Milton Lee, was excused.)

11 MR. RICKETTS: Do you have any further
12 evidence?

13 MR. BISHOP: We have nothing further at
14 this time, Mr. Examiner. The Staff possibly will have
15 some recommendations during the contested matters.

16 MR. RICKETTS: The matters concerning the
17 area around the City of Seymour, do any of the parties
18 wish to make any statement into the record or present
19 any testimony concerning that triply-certified area?

20 MR. BROOKERSON: B-K Electric would like
21 to put on some evidence. D. J. Brookerson.

22 MR. VON HUBEN: Mr. Ricketts, before
23 we proceed, is it imperative that these maps be signed
24 by each party? One or two of those have not been signed
25 by all the parties and Community has not signed one of



1 them, I believe, Clay County.

2 MR. RICKETTS: I think the Staff would
3 prefer that you sign them. I don't think it is ab-
4 solutely imperative.

5 MR. VON HUBEN: We are not involved in
6 the contested matter and I would like to leave now and I
7 would like to sign the map before I go, if I may.

8 MR. RICKETTS: Yes, you may.

9
10 PRESENTATION ON BEHALF OF B-K ELECTRIC
11 COOPERATIVE

12 MR. T. J. HOLBERT
13 was called as a witness by the Applicant, and being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BROOKERSON

17 Q Would you state your name for the record,
18 please?

19 A T. J. Holbert.

20 Q Your official capacity at this time, Mr.
21 Holbert?

22 A General Manager, B-K Electric Cooperative,
23 Seymour.

24 Q How long have you been in that capacity?

25 A I have been General Manager a little over two



1 years.

2 Q And an employee of this particular co-op?

3 A About 34 years.

4 Q Mr. Holbert, would you please make a brief
5 statement as to the reason you seek triple certification
6 in this area surrounding the City of Seymour, Baylor
7 County, Texas?

8 A Briefly, Mr. Examiner, the reason that we
9 seek certification within that half mile area around the
10 corporate limits of Seymour, the cooperative has faci-
11 lities and have had facilities within that half mile area
12 for in excess of 30 years. And for that reason, we
13 feel that we are entitled to continue to serve and serving
14 any additional consumers or loads that might develop in
15 there.

16 Q Do you have any objection, Mr. Holbert, to the
17 triple certification that has been requested by both
18 the City of Seymour and TESCO.

19 A We do not.

20 MR. BROOKERSON: No further questions.

21 MR. RICKETTS: Any cross examination
22 of this witness?

23 MR. BISHOP: I have none.

24 (The witness, Mr. Holbert, was excused.)

25 MR. RICKETTS: Any of the other parties



1 involved in this would like to call any witnesses?

2 MR. BURDETTE: Yes, Mr. Examiner. Texas
3 Electric would like to call to the stand Mr. E. L.
4 Watson, please.

5
6 PRESENTATION ON BEHALF OF TEXAS ELECTRIC
7 SERVICE COMPANY

8
9 MR. E. L. WATSON
10 was called as a witness by the Applicant and, being
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BURDETTE

14 Q Please state your name for the record?

15 A E. L. Watson.

16 Q Where do you live, Mr. Watson?

17 A Fort Worth, Texas.

18 Q And what is your present employment?

19 A Vice President, Texas Electric Service
20 Company.

21 Q Prior to your position which you now hold,
22 what position did you hold with Texas Electric?

23 A Division Manager, Wichita Falls Division.

24 Q Did that Division include Baylor County and
25 the area shown on the map in and around the City of
Seymour?

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1 A Yes, it did.

2 Q Are you familiar with the transmission and
3 distribution lines and service rendered by Texas
4 Electric in the City of Seymour and in the area indicated
5 on Exhibit No. 2 there beside you, which has been in-
6 dicated as a service area for Texas Electric?

7 A Yes, I am.

8 Q Does the Texas Electric Service Company hold
9 a franchise to serve customers within the City of
10 Seymour?

11 A Yes, we do.

12 Q Do you know approximately how long they have
13 held that franchise?

14 A Many years. I don't know the exact date, but
15 I would say 30 years.

16 Q Has Texas Electric, to your knowledge,
17 rendered service under that franchise to customers
18 requesting service in the City of Seymour?

19 A Yes.

20 Q To your knowledge, has the company also
21 extended service to customers in such areas that may have
22 been annexed by the City from time to time over the
23 years?

24 A Yes, we have.

25 Q Now, does Texas Electric also serve customers



1 that presently are situated outside the city limits of
2 Seymour from its distribution system which also serves
3 the inhabitants in the City of Seymour?

4 A Yes, we do.

5 Q Now, on Exhibit 2, there's an area in the
6 center of this county which is outlined in red as the
7 proposed service area of Texas Electric. Do you see
8 that?

9 A Yes.

10 Q Does Texas Electric have transmission and
11 distribution facilities in that area outlined in red?

12 A Yes, we do.

13 Q Do they render service to customers in that
14 area?

15 Yes.

16 Q Does Texas Electric presently render service
17 and does it offer service to those who might request
18 it in the areas in and around the City of Seymour,
19 but which are not presently within the city limits of
20 Seymour?

21 A Yes, it does.

22 Q I don't know whether we can show or not, Mr.
23 Watson, in this map, because the facilities aren't
24 indicated, but can you briefly show the Examiner where
25 generally these service lines of Texas Electric lie in



1 and around the City of Seymour?

2 A Yes. Throughout the city limits of Seymour,
3 we have distribution lines throughout the city, and we
4 have distribution facilities that come out and extend
5 in or through this half a mile area in and around this
6 highway, in this area, out to the west side of Seymour
7 and all in the north area where we serve customers as
8 well as provide a service point for B-K Electric Co-op.

9 Q Mr. Watson, are any of these lines within
10 this half mile area that you have indicated, connected
11 in any way with other service or transmissions lines
12 that lie on into the outlying area indicated within
13 the red line?

14 A Several of them. Most of them, in fact,
15 extend through the area on out past the yellow line.
16 Some of them would extend outside of the city limits
17 only into the area encompassed in yellow.

18 Q Mr. Watson, if as a result of these proceedings,
19 Texas Electric were not certified within all or any
20 portion of this half mile area outside the City of
21 Seymour, would that ~~exclude~~ in fact exclude TESCO from
22 an area in which it has numerous lines and customers
23 which it's presently serving?

24 A It would exclude us from serving in an area
25 in between the two areas that we are providing service,

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1 outside of the area and then inside of the area, so it
2 would cause a gap if that part of it were not certified
3 to us.

4 Q In your experience, would you expect that as
5 natural growth in and around the City of Seymour takes
6 place, that Texas Electric would be called upon to
7 render service to new customers within that half mile
8 area?

9 A Yes. That has been our experience within the
10 past and we would expect it in the future.

11 Q Has Texas Electric reached agreement with the
12 City of Seymour insofar as both parties being certified
13 to serve within this half mile area lying outside the
14 city limits?

15 A Yes, we have.

16 Q Has Texas Electric reached agreement with
17 B-K Electric Cooperative, insofar as both Texas Electric
18 and that cooperative being certified to render service
19 in that area a half a mile around the City of Seymour?

20 A Yes, we have.

21 Q So there is no dispute as between Texas
22 Electric and either of those applicants?

23 A No, there isn't.

24 MR. BURDETTE: I have no further
25 questions.



CROSS EXAMINATION

BY MR. BISHOP

Q I just have one question: Mr. Watson, during the period of time that you were within the area, working for TESCO, has TESCO and the other two utilities made an effort historically to limit the duplication of facilities within the areas they all three serve?

A Yes, we have, for many years. That's been the case and you will find very little duplication of facilities.

Q Would you expect if you were triply-certified to this area, that you would continue to attempt to limit duplication of facilities as much as possible?

A Yes, we sure do.

MR. BISHOP: I have no further questions.

MR. RICKETTS: Any further questions of this witness?

(No response.)

MR. RICKETTS: You may step down.

(The witness, Mr. Watson, was excused.)

MR. RICKETTS: Do you have any further evidence?

MR. BURDETTE: No. That's all we have.



PRESENTATION ON BEHALF OF SEYMOUR
POWER AND LIGHT

MR. MILFORD: My name is John Milford.
I am the City Administrator for the City of Seymour,
representing Seymour Power and Light, the consumer-owned
electric company within the city limits of Seymour.

I'd like to make a statement on behalf of
Seymour Power and Light, representing our application
within the city limits and our half mile ETJ we are
requesting.

We currently, within the city limits have
service to customers throughout the entire city limits,
except for a portion on the west end, recently
annexed about two years ago.

We have lines abutting up to the city limits
and in some cases outside the city limits, if I might
point out on the exhibit.

We have an area in the southeast part of
town which takes in our approximately half mile, takes
in our sewer disposal plant. Also, on this line, we
also have a residential customer and a couple of
irrigation wells.

On the east part of town, we serve one
residential customer which is approximately 1,800 feet
outside the city limits.



1 North of town, we serve the Texas Highway
2 Department Building, warehouse, on the north part of
3 town.

4 And on the extreme edge, on the northwest
5 part of town, we serve a few customers which are just
6 outside the city limits.

7 We are requesting half mile ETJ on the basis
8 that within the near future, the City of Seymour will
9 be annexing areas. And our City Council wishes to have
10 the opportunity to serve these people as we annex.

11 Now, we feel that under the circumstances, with
12 triple certification of Texas Electric and B-K Electric
13 Cooperative, the mutual agreement that we have among
14 us that we will seek no new customers, unless requested
15 by them.

16 We feel that this is a mutual arrangement
17 between all of us. And we feel this is a good working
18 relationship between all of us.

19 As previously mentioned by Mr. Watson, we
20 do not intend, with the case or load of electricity we
21 have, we do not intend to duplicate services; only to
22 have the opportunity to provide service for those
23 people that request Seymour Power and Light.

24 As far as our annexation, we intend annexation
25 of some areas within the next two months, and within the



1 next year annex more areas into our half mile ETJ.

2 That's all I have as far as Seymour Power and
3 Light.

4 MR. RICKETTS: Are there any questions
5 of this witness?

6 MR. BISHOP: I have none.

7 MR. RICKETTS: You may step down.

8 (The witness, Mr. Milford, was excused.

9 MR. RICKETTS: Anything further on this
10 matter concerning the City of Seymour and the other
11 area around it?

12 MR. BISHOP: Mr. Examiner, just for the
13 record, after hearing the testimony, the Staff has
14 no objection or sees no reason why the area should not
15 be certified to the parties that seek certification
16 within that area.

17 MR. RICKETTS: Okay. Is there anything
18 further in the uncontested areas? Do any parties have
19 anything further they wish to present?

20 We will close the evidence then as to the un-
21 contested areas.

22 The record will, of course, be left open for
23 all contests which were mentioned by the parties or by
24 Mr. Lee when he went through the maps.

25 Those of you who have no further interest

