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Chairman

Donna L. Nelson
Commissioner

Kenneth W. Anderson, Jr.
Commissioner

W. Lane Lanford
Executive Director

Rick Perry
Governor

Public Utility Commission of Texas

TO: **State Office of Administrative Hearings**

FROM: **Stephen Journeay**
Director, Commission Advising & Docket Management

RE: **Order of Referral**
P.U.C. Docket No. 37407; SOAH Docket No. 473-10-0399 - ***Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity (CCN) for The Tonkawa - Sweetwater East - Central Bluff 345-kV CREZ Transmission Line in Scurry, Mitchell, Fisher, Nolan and Taylor Counties***

DATE: **September21, 2009**

Enclosed herewith are the following documents related to the above referenced application:

1. Application and Commission file in the above referenced docket*
2. Request for assignment of Administrative Law Judge
3. Order of Referral

cc: without Items 1 and 2: All Parties of Record

*Referred file contains all filings through September 18, 2009

/as

P.U.C. DOCKET NO. 37407
SOAH DOCKET NO. 473-10-0399

APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) FOR THE TONKAWA - SWEETWATER EAST - CENTRAL BLUFF 345-KV CREZ TRANSMISSION LINE IN SCURRY, MITCHELL, FISHER, NOLAN AND TAYLOR COUNTIES	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER OF REFERRAL AND PRELIMINARY ORDER

On September 16, 2009, Oncor Electric Delivery Company LLC (Oncor) filed an application with the Public Utility Commission of Texas (Commission) to amend its certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) priority transmission line in Scurry, Mitchell, Fisher, Nolan, and Taylor Counties, Texas. The project is identified as the Tonkawa – Sweetwater East – Central Bluff 345-kV Transmission Line Project (Project).[1] Notice of this application shall be published in the *Texas Register* on October 2, 2009.

The Commission refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary in the event one or more issues are contested by the parties. The Commission has delegated authority to the Commission Advising & Docket Management Division to issue this Preliminary Order, which is required under TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2008).

All subsequent pleadings in this docket must contain both the SOAH and PUC docket numbers to allow for efficient processing. Parties shall make filings in accordance with P.U.C.

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[1] The style of this proceeding is revised to include the name of the proposed CREZ priority transmission line project to more accurately identify each application.

PROC. R. 22.71(c) regarding the number of copies to be filed or P.U.C. PROC. R. 22.71(d)(c) regarding the number of confidential items to be provided.

I. Procedural History

The proposed Project consists of constructing two new double-circuit 345-kV transmission lines. The first of these lines extends from Oncor's existing Tonkawa Switching Station, located west/northwest of Sweetwater, to the Sweetwater East Switching Station, located east of Sweetwater. The second of these lines extends from Oncor's proposed Sweetwater East Switching Station to Oncor's proposed Central Bluff Switching Station, located south/southeast of Sweetwater. Combined, the two new 345-kV double-circuit lines are approximately 66 miles in length. Given that both circuits of each line will be installed initially, certification of both circuits is being sought in this application. The estimated cost of the Project is $133,337,000.

In Docket No. 33672,[2] the Commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Tonkawa – Sweetwater and Sweetwater – Central Bluff 345-kV transmission line projects, the subject of this application, were specifically identified in that order as necessary facilities. In Docket Number 36801,[3] Oncor was ordered to complete the project identified as Tonkawa – Sweetwater – Central Bluff CREZ Priority Project in a single application. The estimated date to energize facilities for the Tonkawa to Sweetwater East line is May 2011. The estimated date to energize facilities for the Sweetwater East to Central Bluff line is December 2011.

II. Deadline for Decision

PURA§ 39.203(e) applies to this application because the Commission has required Oncor to construct or enlarge transmission or transmission-related facilities for the purpose of meeting

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[2] *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket Number 33672, Order on Rehearing (Oct. 7, 2008).

[3] *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones,* Docket No. 36801, (July 8, 2009).

the goal for generating capacity from renewable energy technologies under PURA § 39.904(a). Pursuant to PURA § 39.203(e), the Commission must issue a final order in this docket before the 181st day after the date the application is filed with the Commission.

III. Issues to be Addressed

The Commission must provide to the SOAH ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.[4] After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Application

1. Is Oncor's application to amend its CCN 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 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.[5] 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 in not presented in the application, the ALJ shall allow Oncor to amend the application and to provide proper notice to affected landowners; if Oncor chooses not to amend the application, the ALJ may dismiss the case without prejudice.

2. Did the notice provided by Oncor comply with P.U.C. PROC. R. 22.52(a)?

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[4] TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2008).

[5] *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. Does the application meet the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3)?

4. Did Oncor submit the CCN application in compliance with the Orders in Docket Nos. 35665[6] and 36801 designating it as a CREZ Priority Transmission Plan facility? If not, should the Commission revoke the designation awarded to Oncor and select another entity for the CREZ Priority Transmission Plan facility at issue in this docket pursuant to P.U.C. SUBST. R. 25.216(f)(1)?

5. Will completion of the project proposed by Oncor in this docket accomplish the intended result for the CREZ priority project designated as "Tonkawa – Sweetwater – Central Bluff" in the CREZ Transmission Plan and ordered by the Commission in Docket Nos. 35665 and 36801?

Route

6. Which proposed transmission line route is the best alternative, weighing the factors set forth in PURA § 37.056(c)(4), excluding (4)(E), and P.U.C. SUBST. R. 25.101(b)(3)(B)?

7. Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?

8. If alternative routes or facility configurations are considered due to individual landowner preference:

   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?

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[6] *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable-Energy Zones*, Docket No. 35665 (Mar. 30, 2009).

Financial Commitments

9. What level of financial commitment, including generation facilities that may have already been built, has been made by renewable energy generators?

Proposed Modifications

10. Has Oncor proposed modifications to the transmission improvements described in the CREZ order? If so,

    a. Would such improvements reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate?

    b. Would such modifications speed up the project's implementation timeline, achieve other technical efficiencies, or otherwise be cost-effective and consistent with the CREZ Transmission Plan?

    c. Have all such modifications been submitted to the Electric Reliability Council of Texas (ERCOT), and has ERCOT made a recommendation to Oncor to be filed in this proceeding?[7]

Estimated Cost

11. Are there discrepancies between the estimated total cost included in the CCN application in this docket and the cost identified for the proposed project in the CREZ Transmission Plan[8]? If so, what are the reasons for the discrepancies?

This list of issues is not intended to be exhaustive. The parties and the SOAH ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by Section IV of this Order, by the SOAH ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to

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[7] *Id.* at 24.

the SOAH ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

IV. Issues Not to be Addressed

The Commission takes the position that the following issues 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.

2. Whether the proposed transmission line is necessary for the service, accommodation, convenience, or safety of the public.

PURA § 39.203(e) exempts electric utilities that are ordered to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under PURA § 39.904(a) from proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public in any proceeding brought under Chapter 37.

3. The adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area, or the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.

PURA § 39.203(e) exempts electric utilities that are ordered to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under PURA § 39.904(a) from addressing the factors listed in PURA § 37.056(c)(1)-(3) and (4)(E). PURA § 39.904(h) states that the Commission is not required to consider the factors provided by PURA § 37.056(c)(1) and(2) in

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[8] The CREZ Transmission Plan, developed by the Commission in Docket No. 33672 (*Commission Staff's Petition for Designation of Competitive Renewable-Energy Zones*, Docket No. 33672 (Oct. 7, 2008)), is based on the ERCOT CREZ Transmission Optimization Study, Scenario 2.

considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone. Pursuant to P.U.C. SUBST. R. 25.174(c)(5), a CCN application for a transmission project intended to serve a competitive renewable energy zone need not address the criteria in PURA § 37.056(c)(1) and (2).

4. Have all renewable energy developers in the competitive renewable energy zone served by the project at issue in this docket posted within 45 days of the filing of this application the financial commitment required by P.U.C. SUBST. R. 25.174(c)(6)?

PURA § 39.904(g)(3) and P.U.C. SUBST. R. 25.174(c)(7) require that the Commission consider the level of financial commitment by generators for each CREZ in determining whether to grant a certificate of convenience and necessity. P.U.C. SUBST. R. 25.174(b) specifies the level of financial commitment by generators. In addition, P.U.C. SUBST. R. 25.174(c)(6) requires the posting of an amount equal to 10% of the developer's pro-rata share of the estimated capital cost of the transmission improvements covered by the CREZ order, including the transmission service provider's (TSP) cost of preparing its CCN application. The requirement to post a letter of credit or other collateral within 45 days of the filing of the CCN application is an *additional* requirement that could partially cover a TSP's costs related to planning and obtaining a CCN. The Commission's Order in Docket No. 35665[9] provides that the determination of the developers' pro-rata shares and the determination of which CCN application will trigger the posting of those shares shall be addressed in Project No. 34577.[10] Because those determinations have not yet been made, the requirement to post financial commitment is not an issue in this proceeding.

V. 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

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[9] *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable-Energy Zones,* Docket No. 35665, Open Meeting Tr. at 88-96 (Feb. 26, 2009) and Open Meeting Tr. at 36-38 and 49 (Mar. 11, 2009).

[10] *Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones*, Project No. 34577.

issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such 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 21st day of September 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

STEPHEN JOURNEAY
DIRECTOR, COMMISSION ADVISING & DOCKET MANAGEMENT

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