



Control Number: 37408



Item Number: 12

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**SOAH DOCKET NO. 473-10-0398  
PUC DOCKET NO. 37408**

<b>APPLICATION OF ONCOR TO AMEND</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>A CERTIFICATE OF CONVENIENCE</b>	§	
<b>AND NECESSITY FOR A PROPOSED</b>	§	
<b>CREZ TRANSMISSION LINE</b>	§	<b>OF</b>
<b>PURSUANT TO P.U.C. SUBST. R. 25.174</b>	§	
<b>WITHIN ARCHER, WICHITA, AND</b>	§	
<b>WILBARGER COUNTIES, TEXAS</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

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**ORDER NO. 1  
REQUIRING INFORMATION FROM ONCOR AND RECOMMENDATION FROM  
STAFF ON SUFFICIENCY OF APPLICATION AND NOTICE;  
NOTICE OF PREHEARING CONFERENCE; AND MODIFICATION OF DISCOVERY  
AND OTHER DEADLINES**

On September 16, 2009, Oncor Delivery Company LLC (Oncor) filed an application with the Public Utility Commission of Texas (PUC or Commission) to amend its certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Archer, Wichita, and Wilbarger Counties, Texas. The Commission has identified the project as the Riley-Bowman 345-kV Transmission Line Project (Project). The application proposes to construct a new 345-kV double-circuit transmission line extending from the new Electric Transmission Texas, LLC, Riley Station in the southeastern portion of Wilbarger County, through the southwestern portion of Wichita County to the existing Oncor Bowman Switching Station in the northern portion of Archer County. The line would be approximately 49 miles in length. The new line is to be constructed as a CREZ CCN for a transmission line awarded to Oncor pursuant to the Order in PUC Docket No. 33672.<sup>1</sup>

**I. ORDER OF REFERRAL, PRELIMINARY ORDER, JURISDICTION, AND  
DEADLINE FOR DECISION**

On September 21, 2009, the Commission issued its Order of Referral and Preliminary Order (Preliminary Order), referring this matter to the State Office of Administrative Hearings (SOAH), requesting the assignment of a SOAH Administrative Law Judge (ALJ) to conduct a hearing and

<sup>1</sup> See, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008).

issue a proposal for decision, if necessary. In the Preliminary Order, the Commission also set forth the issues to be addressed and issues not to be addressed in this proceeding.

The Commission has jurisdiction and authority over this matter pursuant to the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN §§32.001, 37.053, 37.056, and 37.057, and P.U.C. SUBST. R. 25.101. SOAH has jurisdiction, pursuant to TEX. GOV'T CODE ANN §2003.049 and PURA §14.053, over all matters relating to the conduct of a hearing in this matter.

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 was filed with the Commission, or March 15, 2010.

## II. NOTICE

Staff shall submit notice of this proceeding to the *Texas Register* for publication.

Oncor shall give notice of its intent to secure a CCN as required by P.U.C. PROC. R. 22.52(a):

1. Oncor shall publish notice of its intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the counties where a certificate of convenience and necessity is being requested, once a week for two consecutive weeks beginning with the week after the application is filed with the Commission;
2. Oncor shall have mailed notice upon filing the application to municipalities within five miles of the requested territory or facility, and neighboring utilities providing the same utility service within five miles of the requested territory or facility;
3. Oncor shall have mailed notice upon filing the application to the county government(s) of all counties, in which any portion of the proposed facility or requested territory is located;
4. Oncor shall have mailed notice on or before filing the application to the owners of land directly affected by the requested certificate. For the purposes of this paragraph, land is directly affected if an easement would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the proposed facility; and

5. Oncor shall notify the Commission in the event that any directly affected landowner has not received actual notice at least three weeks prior to the deadline for intervention. Oncor will indicate in its filing the name and address of any such landowner and the date and manner by which notice was provided.

In accordance with P.U.C. PROC. R. 22.52(a)(1)(A), the notice shall state the date established for the deadline for intervention in the proceeding (30-days after the date the formal application was filed with the Commission). In this proceeding the intervention deadline is October 16, 2009.

Oncor shall file proof of publication in the form of a publisher's affidavit submitted to the Commission, stating with specificity each county in which the newspaper is of general circulation. Oncor shall file proof of notice by mail by filing an affidavit setting forth the names and addresses of the entities notified by mail and the date the notice was mailed to these entities. A copy of the letter and map sent to the entities shall be included. Oncor shall file its proof of publication and proof of notice by mail by October 7, 2009.

***Recommendation as to Deficiencies, Notice, and Procedural Schedule.*** Pursuant to P.U.C. PROC. R. 22.75(d)(2), if material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application. The 35<sup>th</sup> day after the filing of the application in this proceeding is October 21, 2009.

Therefore on or before October 7, 2009, Commission Staff shall review the application and notify the ALJ through written pleadings, of the following:

1. Any deficiencies in the application;
2. Compliance of notice given with the requirements set out in this order; and
3. A proposed procedural schedule.

Any other party may file recommendations on these issues subject to the same deadline. Oncor shall have until October 15, 2009 at 3:00 p.m. to file its reply to any alleged deficiencies or notice proposals.

### III. NOTICE OF FIRST AND SECOND PREHEARING CONFERENCES

Pursuant to P.U.C. PROC. R. 22.121, the ALJ will convene an initial prehearing conference at **10:00 a.m. on October 6, 2009**, at the SOAH hearing rooms located at the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin, Texas. Due to the expedited nature of this proceeding, an initial prehearing conference before the deadline for intervention is appropriate so that the ALJ can be provided an initial estimation of the number of intervenors and the parties can discuss various methods of managing this case to ensure maximum access while ensuring efficiency.<sup>2</sup> A second prehearing conference to include all intervenors will need to be set for the week of October 19, 2009. The parties must confer and propose dates for the second prehearing conference at the initial prehearing conference.

The prehearing conferences are open to the public.<sup>3</sup> Those persons who have been granted status as intervenors and those who have filed a request to intervene (but the request has not yet been granted) should attend either prehearing conference because the parties will discuss and propose a hearing date and other deadlines that will affect all parties. Also, parties may have questions that may be addressed or discussed at the prehearing conference. For instance, Oncor will likely have maps available for viewing.

At the second prehearing conference, the parties, including the intervenors, should be prepared to discuss a proposed scheduling order, including the proposed hearing date. The parties should also be prepared to discuss any outstanding motions (including pending motions to intervene), and any other matters listed in P.U.C. PROC. R. 22.121.

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<sup>2</sup> Because of the nature of the first prehearing conference and the fact that Docket Nos. 37407 and 37409 were filed on the same date as this docket, the initial prehearing conference will be a joint prehearing conference for Docket Nos. 37407, 37408, and 37409.

<sup>3</sup> Parking in this area is limited. Parking is available for a fee at the Bob Bullock Museum, located at 1800 Congress, and the Capitol Visitors' Parking Garage, located at 1201 San Jacinto, several blocks away from the SOAH hearings facility. There are small private lots at Lavaca and 17<sup>th</sup> Street., 15<sup>th</sup> St. and San Antonio, and 18<sup>th</sup> Street and Colorado. These lots tend to fill up early. Also, anyone attending the prehearing conference will need to check in with the office building security desk in the lobby (it helps to have the SOAH docket number, found at the top of this Order).

#### IV. FILING AND SERVICE PROCEDURES

##### A. Filing

The procedures regarding filing are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper number of legible copies are presented to the PUC filing clerk for filing. **All pleadings must contain both the SOAH and PUC docket numbers to allow for efficient processing.**

For intervenors who may not be familiar with the PUC processes, all PUC filings are available for viewing and downloading from the Commission's website at [www.interchange.puc.state.tx.us](http://www.interchange.puc.state.tx.us). Once there, click "login" and type in the control number 37409 and press "enter." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number. The PUC's procedural rules are also available at the PUC website ([www.puc.state.tx.us](http://www.puc.state.tx.us)).

##### B. Service

A copy of any document filed with the Commission must also be served on all parties as provided by P.U.C. PROC. R. 22.74(a). Any document that requires immediate attention must be filed and either hand-delivered to the ALJ at the William P. Clements Building, Room 504, 300 West 15th Street, Austin, Texas, or faxed to the ALJ at 512-936-0770.

All mail sent to the parties by the ALJ will be sent by first class mail, unless the party requests express mailing and provides an express mail account number. Parties seeking to arrange express mailing should contact Ms. Liz Slick at (512) 475-3363. The ALJ will fax or email time-sensitive orders to the parties.

All parties shall provide their current telephone and facsimile number, if available, and email address, if available, to all other parties and the Commission by filing and serving all parties with such numbers. Each party is responsible for providing the Commission and all parties with any

change in this information. Parties are responsible for updating their own service lists to reflect changed information and the addition of other parties, if any.

Only one address per party will be included on the official service list maintained by SOAH. This service list is attached to this order, for the parties' convenience. Corrections to the service list should be directed to Ms. Slick.

### **C. Filing Deadline Procedures**

Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified. P.U.C. PROC. R. 22.71(i). Parties are encouraged to engage in negotiations. The conduct of negotiations, however, does not relieve the parties of their obligation to meet filing deadlines. Failure to meet such deadlines may subject a party to sanctions specified in P.U.C. PROC. R. 22.161.

### **D. Assumptions Regarding Time of Receipt**

Under P.U.C. PROC. R. 22.74(b), service on a party by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped, and sealed, in a post office or official depository of the United States Postal Service. Service on a party by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier. Service on a party by facsimile transmission shall be complete upon actual receipt by the recipient's telecopier or facsimile transfer machine.

Under P.U.C. PROC. R. 22.74(c), a return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service.

1. Hand Delivery: If a document has been served in person or by agent, the ALJ will assume that the document was received on the date of filing.
2. Courier Receipted Delivery: If a document has been served by courier receipted delivery, the ALJ will assume that the document was received on the date after filing.

3. Regular Mail, Certified Mail, or Registered Mail: If a document has been served by regular mail, certified mail, or registered mail, the ALJ will assume that the document was received no later than three days after filing.
4. Facsimile or Email Transmission: If a document has been served by facsimile transmission before 3:00 p.m., on a work day, the ALJ will assume that the document was received on that day; otherwise, the ALJ will assume that the document was received the next work day after filing.

#### **E. Responses to Motions and Other Pleadings**

Unless otherwise specified, responses to any motion or other pleading shall be filed within three working days from receipt of the pleading to which the response is made. Such responsive pleadings shall state the date of receipt of the pleading to which a response is made. Failure to file a timely response will be considered acquiescence to the relief requested.

### **V. DISCOVERY**

#### **A. General Procedures**

Because this case is proceeding on an expedited basis, the ALJ finds that it would be preferable to have the discovery deadlines applicable to this proceeding shortened. Accordingly, the ALJ orders that discovery shall be governed by the Commission's procedural rules at Subchapter H, except that responses to requests for information and requests for admission shall be provided within ten calendar days of receipt, objections to discovery shall be made within five working days of receipt, motions to compel shall be filed within two working days of receipt, and responses to motions to compel shall be filed within two working days of receipt. If a motion to compel is filed, the ALJ requires that party filing the objection to file a response, even if the dispute is settled.

Parties will not provide copies of Requests for Information (RFIs) or responses to RFIs to the ALJ. However, when a party files a motion to compel, the movant will include a copy of every RFI and objection to which the motion applies. Any affidavits supporting an objection, motion to compel, or response shall be attached to the relevant document. Discovery disputes will be resolved

based on the written documents, any sworn affidavits attached thereto, and materials, if any, provided for *in camera* inspection, unless a prehearing conference is deemed necessary.

Service of discovery requests and responses shall be governed by P.U.C. PROC. R. 22.144(b) except as set forth in this order. The ALJ finds that, because of the nature of this docket, the expedited time frame within which this docket must be processed, and the potential for a large number of parties to this docket, good cause exists pursuant to P.U.C. PROC. R. 22.5(b) to limit the service of discovery requests and responses as follows: discovery requests shall be served only on the party to whom the request is directed and discovery responses shall be served only on the party making the request. All discovery requests and responses shall be filed with the PUC in accordance with Subchapter E of the Commission's procedural rules. Because of the advent of the PUC Interchange, requests to receive copies of discovery requests or responses from other parties will not be considered by the ALJ, and parties will be expected to access those documents through the PUC Interchange (<http://interchange.puc.state.tx.us>).

Material that is the subject of a successful motion to compel will be supplied within three working days of receipt of the order granting the motion to compel or such other date that the ALJ orders.

#### **B. In Camera Review**

When a party seeks *in camera* review of documents in accordance with P.U.C. PROC. R. 22.144(g), it will submit the documents to the ALJ at SOAH. Documents submitted for review *should not be filed with the Commission filing clerk*. If they are filed with the Commission filing clerk, even inadvertently, the documents may not be physically removed from the Commission. Further, any claim to privilege or exemption may be waived by the filing.

At the time the documents are submitted for *in camera* review, the objecting party will file affidavits that list the facts necessary to support the explanation and the privilege or exemption that is claimed. The affidavits will be public documents and will be filed with the Commission filing clerk and served upon the propounding party.

RFI answers submitted for *in camera* review will be grouped and separated from other answers by envelope, folder, box, or other appropriate containers; materials that constitute a response to more than one RFI will be clearly cross-referenced. RFI answers submitted for *in camera* review will not be accessible to the other parties unless the ALJ orders.

### C. Depositions

Depositions may be taken pursuant to P.U.C. PROC. R. 22.143 at a time and place agreed upon by the parties. Depositions taken pursuant to agreement of the parties will be admissible at hearing as if a commission had been issued. Introduction of depositions at the hearing, other than during cross-examination or redirect examination, will be governed by the deadlines for pre-filing of evidence established in this order.

## VI. POSITION STATEMENTS

Pursuant to P.U.C. PROC. R. 22.124(a), parties must either file written testimony or a statement of position. A statement of position clarifies a party's position but is not evidence. Testimony is generally offered as evidence and must conform to the Texas Rules of Evidence. For example, if the witness is not an expert, the testimony must be based on the witness' personal knowledge. *See* TEX. R. EVID. 602, 701, and 702. A due date for the filing of either a statement of position or testimony will be set in the procedural schedule, which will be published in a written order. Any party that does not timely file either written testimony or a position statement will be dismissed from this proceeding and prohibited from participating in the hearing on the merits and post-hearing briefing in accordance with P.U.C. PROC. R. 22.124 and 22.161.

**SIGNED September 25, 2009**



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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**