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OPEN MEETING COVER SHEET

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MEETING DATE: April 23, 2010

DATE DELIVERED: April 22, 2010

AGENDA ITEM NO.: 2

CAPTION: Docket No. 37448; SOAH Docket No. 473-10-1097 - Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas.

ACTION REQUESTED: Chairman Smitherman Memo

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

FROM: Chairman Barry T. Smitherman *BTS*

DATE: April 22, 2010

RE: Item No. 2, Docket No. 37448; SOAH Docket No. 473-10-1097 - Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas.

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This is a very difficult, and in some ways, troubling case. I say that without ascribing blame, but rather by looking at the route choices presented to the Commission. Up to this point in our CREZ cases, the Commission has been able to select among several viable and distinct route choices. As I will articulate below, in this case it doesn't feel like we have more than two choices, at least regarding the "middle" part of the study area—roughly from east of Llano to southwest of Lampasas. We are presented with choosing either the utility's preferred route north of Lake Buchanan (GN11) or the ALJ's recommended route south of Lake Buchanan (GN6). From my perspective, Staff's recommend route (GN10 or GN10M) is not really a third choice, but rather a permutation of LCRA's preferred route, and one which I find problematic. As a learned friend of mine once said, "choosing among only two alternatives is not really choice, it's a dilemma."

I think that we are all in agreement with regard to the appropriate route for the southern portion of the study area. Segments C1, C3 (as adjusted), C5, C9, C11 and C12 were recommended by both the utility and the ALJ. Most, if not all of this route, utilizes existing transmission right-of-way. In fact, in its application for a CCN, LCRA stated (p. 7) that it plans to "retire" circuit T-130 and not reinstall the existing 69-kV circuit (T-130) alongside the new 345-kV circuit. As we have repeatedly stated, our rules, specifically 25.101(b)(3)(B), appear to place much emphasis on "whether the routes utilize existing compatible rights-of-way... [and/or] whether the routes parallel existing compatible rights-of-way." These segments appear to readily satisfy those requirements while affecting few habitable structures.

Proceeding north of the intersection of C13 and C14, along either GN 10 or GN 11, is very problematic for me. I cannot support either the Staff's proposal or the utility's proposal. Segments C13, C15, C16, C20, C21, C22 or C24 do not use existing transmission line ROW nor do they parallel existing transmission ROW. While C15 appears to parallel a pipeline for about 21000 feet, it goes out of its way (heading away from the Newton substation) to do so! In fact, adding up the lengths of segments C15, C20 and C24 to get to the same terminus point as C16 plus C22, results in a line that is 16,400 feet longer than LCRA's proposal. C16 only parallels about 3000 feet of property lines, and C20 and C24 parallel nothing! Also, these proposed route segments cut straight through the middle of a number of properties, both large and small. And while the shortest distance between two points may be a straight line, when it comes to citing new transmission lines, this Commission has rarely subscribed to that theory. Additionally, Texas Parks & Wildlife (TPWD) raised a number of concerns in their letter to Brian Almon of December 23, 2009, regarding the utility's preferred route. According to TPWD, "Route GN11 crosses the Colorado River in known habitat for Bald Eagle and potential habitat for Golden-cheeked Warbler and Black-capped Vireo." TPWD concludes on page 22, "Based on the information provided, Route GN6 would have the least amount of adverse impact on biological resources, and substantially less than Route GN11, the preferred route, as noted above. TPWD recommends selection of GN6...."

Regarding segment C21, and without giving credence to late filed letters to the Commissioners, I am concerned about the propriety of using this segment. Segment C21 was not part of the original CCN application filed by LCRA. And while it is true that the Commission has modified routes to accommodate specific landowner request, I don't recall an instance where the route didn't continue along the same path once it "cleared" the land affected by the modification. In other words, if segment C21 rejoined segment C20 after passing through the Barnes Keith ranch, then I would be less concerned. Allowing this type of adjustment seems to be opening "Pandora's Box" for future CCN cases for CREZ lines. For example, with some of the CREZ lines proposed for the Panhandle area where there exist several very large ranches, I could envision a situation where one landowner could, during the CCN process, propose a number of line segments running only through their property and connecting two or more proposed routes. Such a "maneuver" could create countless route permutations which did not exist when the original CCN was filed by the utility. This would be a nightmare for intervenors and we need to be very careful in proceeding down this path.

Because I'm unwilling to consider segment C21, if I were to adopt the Staff proposal, it would force me to adopt segment C20. C20 passes just south of the Colorado Bend State Park and very near Post Oak Falls. On page 21 of their letter, TPWD commented that, "such close proximity to Colorado Bend State Park would compromise park use and may have unforeseen effects on wildlife within." Of course, considering "recreational and park areas" is one of the factors listed in PURA § 37.056(c)(4), which the Commission must consider in deciding whether to grant or deny a CCN.

Regarding the ALJ's recommendation for segments C14, C17 and C18, I could support it; however, this route is not without its own problems. While it was nice to see the elected officials from Llano and Burnet Counties appear at our last Open Meeting, the fact is that Segment C14 had only two interveners—Chanas Ranch and Wayne and Linda Davis (though the Davis couple was eventually dismissed as a party). C14 would utilize existing transmission right of way. In its application for CCN, LCRA stated that "Route GN6 (of which C14 is a part) can be constructed upon some of LCRA TSC's existing transmission line ROW 69-kV circuit T-267, Buchanan CTEC to Pittsburg. On this ROW, LCRA TSC intends to reinstall the existing 69-kV circuit (T-267) along-side the new 345-kV circuit on new double-circuit-capable structures." This is positive. However, there appears to be a dispute as to the width of the existing ROW on C14, and the height of the existing (and antiquated) 69-kV wooden H-frame structure. While our rules clearly give a preference for utilizing existing compatible rights-of-way and paralleling existing compatible rights-of-way, at what point does the ROW of an old, short, narrow 69-kV line become "incompatible?"

It is undisputed that segment C14 affects 86 habitable structures within 500 feet of the ROW centerline. This is a very large number of habitable structures. Route GN6 in its entirety affects 164 habitable structures. In order to minimize this number, both the ALJ and the intervenors favoring GN6 put forth this concept of "newly affected habitable structures," and attempt to persuade the Commission to focus on this number rather than the total number of habitable structures. After much searching, I am unable to find a statutory or PUC rule basis for the concept of "newly affected habitable structures." In fact, none of our preceding CREZ CCN cases have used the number of newly affected habitable structures as a decision factor. Therefore, I'm unwilling to give this new concept any weight in this case.

Segment C18 is acceptable to me as this parallels a newly constructed 138-kV line for over 73000 feet and affects only two habitable structures.

Notwithstanding all my previously stated concerns, I might be persuaded to go forward with route GN6 were it not for serious reservations that I have regarding Segments C27, C28, C29 and C30. None of these segments use existing transmission line ROW nor do they parallel any existing transmission ROW. C27 plus C29 affect 34 habitable structures and C27, C28 and C30 together affect 21 habitable structures. And unlike the situation with Segment C14 where there were only two intervenors (really just one), in this northern portion of GN6 there are numerous intervenors represented by the Landowners Preservation Group (LPG), each of which is presented with the "Morton's Fork" of having the transmission line either in their front yard or their back yard. Bottom line, I am disappointed with the number and quality of the route alternatives in Lampasas County. Perhaps the problem was that LCRA did not know in advance of their CCN filing where the Oncor transmission line from Brown to Newton would be located. Now that Docket #37464 has been decided by the Commission, LCRA should have a better sense of the route alternatives available in the area in and around the City of Lampasas. Such knowledge would allow LCRA to re-file their CCN application with routes that adhere to both PURA and our rules.

Given all these issues, I am not comfortable approving the application at this time. I look forward to discussing this with you at the Open Meeting.