

PROJECT NO. 39125

RULEMAKING AND FORM	§	PUBLIC UTILITY COMMISSION
AMENDMENTS FOR ELECTRIC	§	
TRANSMISSION CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY	§	
APPLICATIONS	§	

**ORDER ADOPTING AMENDMENTS TO §22.52
AS APPROVED AT THE APRIL 29, 2011 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §22.52, relating to Notice in Licensing Proceedings with changes to the proposed text as published in the March 11, 2011 issue of the *Texas Register* (36 TexReg 1637). The amendments change references to routes for a proposed transmission line for which a certificate of convenience and necessity (CCN) is sought by a utility, require that newspaper notice for such a line include a map, insert language establishing notice requirements to the Texas Parks and Wildlife Department, and establish a requirement that each notice document include language that all proposed routes are available for selection in a CCN proceeding.

The commission received comments on the proposed amendments from Southwestern Public Service Company (SPS); CenterPoint Energy Houston (CenterPoint); Office of Public Utility Counsel (OPUC); Texas Industrial Energy Consumers (TIEC); Lower Colorado River Authority Transmission Service Company (LCRA TSC); and Entergy Texas (ETI). In addition, Oncor Electric Delivery Company, LLC; Electric Transmission Texas, LLC; Lone Star Transmission, LLC; Cross Texas Transmission, LLC; Southwestern Electric Power Company; AEP Texas Central Company, AEP Texas North Company and Wind Energy Transmission Texas, LLC (together the Joint Commenters) filed comments together. The commission received reply

comments from CenterPoint, Oncor, and AEP North Texas Company, AEP Texas Central Company, Southwestern Electric Power Company, and Electric Transmission Texas, LLC. (together AEP and ETT). A public hearing on the rule was not requested.

Generally, the commenters welcomed the changes as improvements to the CCN process. Some suggestions for modifications or additions to the rule were recommended, which are summarized below.

Summary of Comments

Subsection (a)(1)(B)

Most of the commenters supported the changes requiring the addition of a map to published notice. Several commenters stated that they already publish a map as a standard practice. SPS, CenterPoint, and ETI disagreed that the published maps should conform with the requirements of subsection (a)(1)(C), however. SPS and ETI stated that compliance with this notice requirement would add significant costs, which would ultimately be borne by the ratepayers. SPS stated it is working on an upcoming CCN application to build a 190-mile transmission line and, after researching the costs, determined that using an 11x17 size map depicting the overall project on one newspaper page would cost \$3,500 but that conforming to proposed subsection (a)(1)(C) could comprise ten pages, at a cost of \$35,000, a substantial difference. ETI stated that, depending on the county and the newspaper, one time publication of a map could be as expensive as \$55,000. Both SPS and ETI stated that detailed maps are mailed to landowners and other directly affected parties, and published notice requires reference to where a copy of a detailed map can be viewed or obtained. SPS requested that any map that is required be a high-level overview of the affected

geographic area, generally illustrating the location of proposed routes. ETI requested that the proposed inclusion of a map in published notice be deleted and that a new sentence be added that would impose additional requirements on the written description of the routes. CenterPoint stated that the cost of a one-page advertisement in the Houston Chronicle is \$45,000. CenterPoint stated that, while in the past it has published maps in its notices, they did not provide the level of detail required by proposed subsection (a)(1)(C) and offered alternative language for proposed subsection (a)(1)(B), which reads: “The notice shall include a map with the all of the alternative locations of the proposed routes and major roads and streets as described in subparagraph (C) of this paragraph and shall describe in clear, precise language the geographic area for...” In their reply comments, AEP and ETT stated that it is standard practice for them to publish such maps and that their experience leads them to believe that, in spite of the cost, there are benefits to including a map with published notice, because a potentially directly impacted landowner gains a good visual understanding for how his property could be impacted by the alternative routes proposed by a utility. Similarly, Oncor supported the addition of the detailed map. Oncor stated that it is standard practice for the company to publish such map and that commonly landowners have shown up to Oncor’s public meetings, technical conferences, and prehearing conferences with the maps they have cut out of the newspaper and utilized to understand the impact of a proposed project on a particular piece of property. According to Oncor, these individuals included both directly and non-directly affected landowners who would not otherwise have received a map of the project area.

Commission Response

The commission appreciates the cost issues raised by SPS and ETI but disagrees with ETI's recommendation to eliminate the requirement for a map in the published notice. While the addition of a map does increase the costs, the commission believes that it will be an important tool for potentially affected parties to more clearly understand the areas that may be affected by the proposed project. The commission agrees with SPS, however, that the level of detail required by subsection (a)(1)(C) may not be necessary to convey sufficient information to potentially affected parties. Instead of requiring a map that meets the requirements of subsection (a)(1)(C), the commission is changing subsection (a)(1)(B) to use broader language similar to that recommended by CenterPoint. The commission has modified subsection (a)(1)(C) to take out the requirement to state from whom a copy of the map may be obtained because a map will be provided in the newspaper notice. In addition, the commission has modified subsection (a)(1)(C) to clarify that the map that is available for review must be a detailed routing map.

Requests to Address Notice to the Texas Parks and Wildlife Department

In conjunction with the proposed rule amendments in this proceeding, the commission published notice of proposed changes to the CCN application forms, including changes to the application form entitled, *Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line (non-CREZ form)*, specifying how the utility must notify the Texas Parks and Wildlife Department (TPWD) of a pending transmission CCN application and how the commission would be notified that the information was provided to TPWD. These requirements are already included in the existing form entitled, *Application for a Certificate of Convenience*

and Necessity for a Proposed Transmission Line pursuant to P.U.C. SUBST. R. 25.174 (CREZ form). SPS and ETI stated that the notice requirements to TPWD are appropriate to include in the rule as subsection (a)(1)(E).

ETI and CenterPoint opposed the proposed deadline of nine days from the date an application is filed to file an affidavit for notice to TPWD. ETI recommended allowing an applicant to attest to notice to TPWD at the same time that it provides other attestations of notice. CenterPoint recommended that applicants be allowed to confirm transmittal of the TPWD letter in the affidavit confirming other forms of notice.

AEP and ETT agreed with SPS and ETI that it is more appropriate to address the TPWD notice requirements in P.U.C. SUBST. R. 22.52 than the application forms. AEP and ETT and Oncor also supported the elimination of the requirement to file an affidavit within nine days, because it would be more efficient to combine all notice verifications into one affidavit attesting to the required notices being provided.

Commission Response

The commission agrees that the requirements concerning TPWD are appropriately included in the rule, and has therefore added subsection (a)(1)(E). It disagrees, however, that the requirements should be taken out of the application forms, as many substantive requirements found in the rules are also included in commission application forms to help ensure that they are addressed. In addition, it is helpful to the applicant to include the TPWD address in the application forms, and including the requirements concerning

TPWD in these forms provides context for providing the TPWD address. The commission has not included a nine-day filing deadline for the TPWD affidavit as that can be addressed by an Administrative Law Judge on a case-by-case basis.

Joint Commenters Request to Add Subsection (a)(7)

Joint Commenters requested that additional information that has been provided in the past by utilities be added to the notice. Specifically, Joint Commenters requested a paragraph (7), which would state: “All notices of an applicant’s intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following language: All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas.”

Commission Response

The commission agrees that the language would be helpful and has accordingly added a new subsection (a)(7).

Effective Date of Amendments

LCRA TSC stated that utilities are always in the process of planning new CCN amendments, and requested that the commission determine an effective date for the rule amendments to take effect. Oncor supported the adoption of a specific effective date.

Commission Response

In order to provide utilities sufficient time to prepare to comply with the amendments, the amendments shall take effect June 1, 2011.

Submission of Documents in CCN proceedings

OPUC recommended that *pro se* intervenors, during the course of a CCN proceeding, should be required to submit documents only to the commission where they will be posted to the commission's online interchange system. OPUC stated that the filing and service of documents can be an onerous requirement in particular for landowners that lack the resources to hire legal counsel and may discourage potential intervenors from participating in the CCN proceeding due to lack of sufficient resources.

Commission Response

The commission appreciates OPUC's comments. However, requirements for filing documents and serving them on other parties is addressed in rules other than §22.52. OPUC's request is outside the scope of this rulemaking.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and PURA

§§37.053-37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §§14.002, 14.052, and 37.053-37.057 and APA §2001.004.

§22.52. Notice in Licensing Proceedings.

- (a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:
- (1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.
 - (A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an

application for certificate of convenience and necessity filed pursuant to the Public Utility Regulatory Act §39.203(e)) and that a letter requesting intervention should be received by the commission by that date.

- (B) The notice shall describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice shall include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.
- (C) The notice shall state a location where a detailed routing map may be reviewed. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.
- (D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published,

the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

- (E) The applicant shall provide a copy of each environmental impact study and/or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD shall be provided in the form of an affidavit to the commission, which shall specify the date the information was mailed or otherwise provided to TPWD, and shall provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.
- (2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide

notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

- (3) Applicant shall, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest 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 centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.
 - (A) The notice must contain all information required in paragraph (1) of this subsection and shall include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.
 - (B) The notice must include a map as described in paragraph (1)(C) of this subsection.
 - (C) Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.

- (D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.
- (E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days from the date of delivery to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission.
- (4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner

of land within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility shall not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes.

- (5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.
 - (6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's staff.
 - (7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."
- (b) **Notice in telephone licensing proceedings.** In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

- (1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

- (2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.
- (3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §22.52 relating to Notice in Licensing Proceedings is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the _____ day of MAY 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER