

PUC DOCKET NO. 37529
SOAH DOCKET NO. 473-10-1089

APPLICATION OF ONCOR §
ELECTRIC DELIVERY COMPANY §
LLC TO AMEND ITS CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
FOR THE CENTRAL BLUFF – BLUFF §
CREEK 345-KV CREZ TRANSMISSION §
LINE IN NOLAN, TAYLOR, AND §
RUNNELS COUNTIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

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ORDER

This Order addresses the application of Oncor Electric Delivery Company, LLC (Oncor) for approval to amend a certificate of convenience and necessity (CCN) for the Central Bluff – Bluff Creek 345-kV Competitive Renewable Energy Zone (CREZ) transmission line in Nolan, Taylor, and Runnels Counties. This docket was processed in accordance with applicable statutes and Public Utility Commission of Texas (Commission) rules. Oncor and Commission Staff, the only remaining parties to this proceeding, entered into a settlement agreement that resolves all of the issues in this proceeding. Consistent with the settlement agreement, Oncor's application is approved.

In order to more explicitly address the recommendations and comments contained in the letter submitted by the Texas Parks and Wildlife Department (TPWD) on January 5, 2010, the Commission makes several changes to the order. The Commission modifies Findings of Fact Nos. 82, 83, and 97; deletes Finding of Fact No. 84, and adds new Finding of Fact No. 81A.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. Oncor is an investor-owned electric utility providing service under CCN No. 30158.
2. On October 28, 2009, Oncor filed an application to amend its certificate of convenience and necessity for the Central Bluff – Bluff Creek 345-kV CREZ transmission line (proposed transmission line project or proposed project) in Nolan, Taylor, and Runnels

Counties (application). The proposed transmission line project consists of a new 345-kV double-circuit transmission line that extends from Oncor's new Central Bluff Switching Station to the existing American Electric Power Texas North Company's (AEP's) Bluff Creek switching station. The proposed transmission line project is located within the Central CREZ. The new 345-kV double-circuit line is approximately 9.5 miles in length and will be constructed on Oncor's standard lattice steel "V" towers supporting two 345-kV circuits.

3. On October 28, 2009, Oncor filed the direct testimonies of Kelli Boren, Brenda Perkins, Robert Holt, and Kenneth Donohoo.
4. On October 28, 2009, Oncor (a) either hand-delivered or mailed written notice of the application, including a map, to each county in which the requested facilities will be located, including Nolan, Taylor, and Runnels Counties; (b) provided notice of the application to each neighboring utility providing the same utility service within five miles of the requested facilities, including AEP, Taylor Electric Cooperative, Inc., and Coleman County Electric Cooperative, Inc.; and (c) mailed written notice by first-class mail of the application, including a map, to each landowner as stated on current county tax rolls that will be directly affected if the requested certificate amendment is granted.
5. No incorporated municipalities were mailed written notice of the filing of the application because there are no municipalities located within five miles of the requested facilities.
6. On November 2, 2009, this matter was referred to the State Office of Administrative Hearings (SOAH).
7. On November 4, 2009, Oncor published notice of the application in the *Sweetwater Reporter*, *Abilene Reporter-News*, and *Winters Enterprise*, all of which are newspapers of general circulation within the counties where the proposed project is being requested.

8. On November 6, 2009, Oncor filed an affidavit attesting to the provision of a copy of the environmental assessment and alternative route analysis (environmental assessment) to the TPWD.
9. On November 17, 2009, the SOAH Administrative Law Judge (ALJ) filed Order No. 1, requiring information from Oncor regarding notice and a recommendation from Commission Staff regarding the sufficiency of the application.
10. On November 18, 2009, Oncor filed an affidavit attesting to the provision of notice to cities, counties, neighboring utilities, and landowners.
11. On November 20, 2009, Commission Staff recommended that Oncor's notice be found sufficient.
12. On November 25, 2009, the SOAH ALJ filed Order No. 2, which found Oncor's notice adequate and the application sufficient.
13. On December 1, 2009, the Commission issued a supplemental preliminary order outlining the requirement to provide a written response to each recommendation or comment made by TPWD.
14. On December 9, 2009, the SOAH ALJ filed Order No. 3, which memorialized the first prehearing conference, established a procedural schedule, gave notice of a second prehearing conference, provisionally granted the motion to intervene of the Railroad Commission of Texas (RRC), and established procedures related to discovery, evidence, and exhibits.
15. On January 5, 2010, the TPWD filed a letter containing comments and recommendations regarding the proposed project (TPWD comment letter).
16. On January 22, 2010, Oncor filed the rebuttal testimonies of Kelli D. Boren, Brenda J. Perkins, and Deborah A. Boyle.

17. On February 1, 2010, the SOAH ALJ filed Order No. 5, which struck a number of intervenors for failing to file either a statement of position or prefiled testimony, granted the RRC's motion to withdraw, and provided notice of the hearing on the merits.
18. The hearing on the merits was held on February 3, 2010.
19. Oncor and Commission Staff were the only parties that appeared at the hearing on the merits.

Application/Project Description

20. The proposed transmission line project consists of a new 345-kV double-circuit transmission line that extends from the new Oncor Central Bluff Switching Station, to be located on the north side of State Highway (SH) 153 in Nolan County, Texas, to AEP's existing Bluff Creek Switching Station, located approximately 2.25 miles southeast of U.S. Highway (US) 277, in Taylor County, Texas. The new 345-kV double-circuit line is approximately 9.5 miles in length and will be constructed on Oncor's standard lattice steel "V" towers supporting two 345-kV circuits.
21. Oncor filed one preferred route (route 7) and seven alternative routes.
22. The proposed transmission line project is a CREZ priority project.
23. The application was determined to be sufficient and notice was determined to be adequate.
24. Sufficiency of the application and notice was not contested.

Routing of the Proposed Transmission Line Project

25. Oncor retained PBS&J to prepare an environmental assessment.
26. Oncor considered and submitted a sufficient number of geographically diverse routes for the proposed transmission line project.

27. The proposed transmission line project complies with all aspects of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA) § 37.056 and P.U.C. SUBST. R. 25.101.
28. The proposed transmission line project will accomplish the intended results for the CREZ priority project designated as “Central Bluff – Bluff Creek” in the CREZ transmission optimization study (CTO) and ordered by the Commission in Docket Nos. 33672, 35665, and 36801.¹
29. The proposed transmission line project will be constructed on route 7 as described in the application.
30. All filed routes comply with PURA § 37.056 and P.U.C. SUBST. R. 25.101.

Community Values

31. Oncor held a public open-house meeting in accordance with P.U.C. PROC. R. 22.52. The meeting was held on June 16, 2009, at the Jim Ned High School Cafetorium.
32. A total of 60 people signed in as attending the public open-house meeting.
33. Based on information received from the public involvement program, portions of 11 existing route links were modified.
34. Information received from the public open-house meeting and from local, state, and federal agencies was considered and incorporated into the selection of preferred and alternative routes by Oncor.

¹ *Commission Staff's Petition for Designation of Competitive-Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008), *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, Order on Rehearing (May 15, 2009), and *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones*, Docket No. 36801, Order (Jul. 8, 2009).

35. There are no significant impacts to any communication facilities, airports, or croplands irrigated by traveling irrigation systems anticipated from construction of the proposed transmission line project.
36. Commission Staff recommends that Oncor cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed transmission line project.

Recreational and Park Areas

37. The proposed transmission line project will not significantly impact the use or enjoyment of park and recreational facilities.
38. There are no parks or recreational areas owned by a governmental body or an organized group, club, or church crossed by the preferred route or any alternative routes.
39. There are no parks or recreational areas owned by a governmental body or an organized group, club, or church within 1,000 feet of the centerline of the preferred route or any alternative routes.

Historical Values

40. No significant impacts to archaeological or historical resources are anticipated as a result of construction of the proposed transmission line project on any of the alternative routes.
41. Two cultural resource sites appear to be within 1,000 feet of an alternative route.
42. No recorded cultural resource sites are crossed by an alternative route.
43. No cultural resource sites are crossed by the preferred route or are reported to be within 1,000 feet of its centerline.
44. Approximately 82% of the area traversed by the preferred route is considered to be of high archaeological site potential.

45. Commission Staff recommends that, in the event Oncor or its contractors encounter any artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the Texas Historical Commission (THC).

Aesthetic Values

46. Aesthetic impacts of the proposed transmission line project have been considered and minimized to the extent possible.
47. Of the estimated 9.5-mile length of the preferred route, none of it lies within the foreground visual zone of parks and recreational areas and approximately 1.7 miles (8,920 feet) lies within the foreground visual zone of a State or U.S. Highway.

Environmental Integrity

48. The environmental assessment prepared by PBS&J for Oncor analyzed the possible impacts of the proposed transmission line project on numerous different environmental factors.
49. Construction of the proposed transmission line project will not have significant effect on the physiographic or geologic features of the area.
50. Impacts on prime farmland will be insignificant and limited to the physical occupation of small areas at the base of support structures.
51. Construction of the proposed transmission line project should have little adverse impact on the surface or ground water resources of the area.
52. While the majority of the proposed transmission line project will be constructed on land that has already been cleared for existing corridors or land utilized primarily as cropland or pastureland, construction along any of the alternative routes would require a minimal amount of clearing in mixed hardwood shrublands.

53. The proposed transmission line project will only have a minor impact on local wildlife.
54. Construction of the proposed project on the preferred route should have no significant effect on threatened or endangered plant or animal species.
55. The preferred route does not cross any known habitat or known locations of threatened or endangered plant or animal species.
56. The Texas poppy-mallow is the only threatened or endangered plant listed within the three counties where the proposed transmission line project might be constructed. However, there are no known occurrences of the Texas poppy-mallow within the specific area where the proposed transmission line project might be constructed.
57. The majority of endangered or threatened animal species of potential occurrence in the area—including the whooping crane, bald eagle, peregrine falcon, interior least tern (ILT), and black-capped vireo (BCV)—are highly mobile and either do not normally utilize local environments or pass through the area only during migration. Many of these species are not known to inhabit the study area, but may pass through during seasonal migration or post-breeding dispersal.
58. The proposed project is unlikely to affect most federally-endangered animal species, and any effect the proposed project will have on these species will be mitigated by Oncor's standard practices.
59. Oncor appropriately performed an evaluation of the impacts of the proposed transmission line project on endangered and threatened species.
60. To protect raptors and migratory birds, Commission Staff recommends that Oncor follow the procedures outlined in the following publication for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by the APLIC in April, 2005.

61. Commission Staff recommends that Oncor minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate right-of-way (ROW) clearance for the transmission line. In addition, Commission Staff recommends that Oncor re-vegetate using native species and consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, Commission Staff recommends that Oncor avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and U.S. Fish and Wildlife Service (USFWS).
62. Commission Staff recommends that Oncor implement erosion control measures as appropriate and return each affected landowner's property to its original contours unless otherwise agreed to by the landowners.
63. Commission Staff recommends that Oncor exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.

Goal for Renewable Energy

64. The proposed transmission line project is consistent with and in furtherance of the goals and mandates of PURA § 39.904.

Engineering Constraints

65. None of Oncor's filed alternative routes present any engineering constraints that cannot be resolved with additional consideration during the design and construction phase of the proposed transmission line project.

Compatible Corridors

66. The preferred route utilizes or parallels existing compatible ROW and apparent property boundaries for approximately 97.2% of the length of the line.

Prudent Avoidance

67. The proposed transmission line project complies with the policy of prudent avoidance.
68. Over its approximate 9.5-mile length, the preferred route has only 3 habitable structures within 500 feet of its centerline.
69. The preferred route is not located in proximity to any concentrated residential development and does not pass through commercial or industrial areas.

Financial Commitments

70. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient under PURA § 39.904(g)(3) to approve Oncor's application for the proposed transmission line project.

Proposed Modifications to the Scope of Work Contained in the CTO

71. The CTO proposed terminating both circuits of the proposed transmission line project at the AEP-owned Bluff Creek Switching Station. However, both Oncor and AEP are proposing to modify the proposed project by having one circuit terminate at the Bluff Creek Switching Station and having the second circuit of the proposed transmission line project fly-by Bluff Creek en route to the Brown Switching Station.
72. The CTO proposed constructing the line using bundled 1433.6 kcmil ACSS/TW. Oncor proposes using bundled 1926.9 kcmil ACSS/TW.
73. The CTO listed the Bluff Creek to Brown project as being 6-miles long. However, the preferred route for the proposed transmission line project is approximately 9.5-miles long.
74. Oncor submitted information regarding each modification to the Electric Reliability Council of Texas, Inc. (ERCOT), and ERCOT concluded that Oncor's modifications to the CTO were both cost-effective and consistent with the intent of the CTO.

75. Oncor's proposed changes are cost-effective, consistent with the CTO, and will have numerous implementation advantages.

Estimated Costs

76. The overall estimated cost for the proposed transmission line project along the preferred route is \$12,210,000.
77. The CTO estimate for the proposed transmission line project was \$11,280,000.
78. Oncor's estimated cost for the proposed transmission line project is approximately 8.2% higher than the CTO's estimate.
79. The difference in costs between Oncor's estimate and the CTO's estimate is primarily due to the length considered in each cost estimate. The actual distance between the new Central Bluff Switching Station and Bluff Creek Switching Station is roughly 58% longer than the CTO estimated.

Need for the Proposed Transmission Line

80. The proposed transmission line project was specifically listed as a CREZ priority project in the Commission's final orders in Docket Nos. 33672, 35665, and 36801.
81. As a CREZ transmission project identified in Docket Nos. 33672, 35665, and 36801, the proposed transmission line project is exempt under PURA §§ 39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement to consider the factors in PURA § 37.056(c)(1)-(3) and (4)(E).

TPWD's Written Comments and Recommendations

- 81A. On January 5, 2010, TPWD filed a letter with comments and recommendations in this docket; however, that letter was not admitted into evidence. This order addresses only those recommendations and comments for which there is record evidence.
82. No modifications to the project should be made in response to the comments included in

the TPWD comment letter because TPWD's recommendations are either already part of the normal post-certification construction process or TPWD's recommendations are not necessary, not operationally practical, or do not take into consideration all elements of PURA § 37.056 and P.U.C. SUBST. R. 25.101.

83. The mitigation measures recommended by Commission Staff in the present proceeding and typically included in the Commission's final order for CCN proceedings are included in this order and are represented in Ordering Paragraphs Nos. 3-7.
84. DELETED.
85. Oncor must comply with all environmental laws and regulations governing endangered species.
86. It is impractical at this time, prior to approval of a route, for Oncor to make a determination of impact on the federally listed endangered black-capped vireo.
87. Once a route is chosen and Oncor can access private property, Oncor performs a more detailed assessment of the affected area, determines how threatened and endangered species habitat may be impacted, and—if further environmental permits are necessary—Oncor will obtain those permits and comply with all permit conditions.
88. Oncor currently uses permitted biological monitors to ensure compliance with the Endangered Species Act and other applicable regulatory requirements. Additionally, Oncor conducts assessments to determine if federally listed threatened and endangered species habitat is present.
89. Oncor's current best management practices are sufficient and thus no additional permitted biological monitor is necessary during clearing and construction activities for the Texas horned lizard.
90. No modification or amendment needs to be made to Oncor's environmental assessment in

light of TPWD's recommendations.

91. Performing a biological evaluation before the routes are selected would cause extensive delays and significant cost increases. Oncor will perform a biological assessment once a route is selected.
92. TPWD's recommendation that Oncor perform a biological assessment before a preferred route is selected would require Oncor to assess the entire study area. It is impractical and unnecessary to undertake a comprehensive biological assessment of a study area before a final order identifying a route is issued by the Commission.
93. Oncor will use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
94. Oncor will identify BCV habitat and utilize best management practices to avoid, minimize, or mitigate potential impacts.
95. An absolute restriction on vegetation clearing activities during the general bird nesting season, which is March through August, is neither reasonable nor practical.
96. Oncor's current method of clearing the ROW, which has been used for many years, is necessary to ensure the safety and reliability of the line.
97. The standard mitigation requirements included in the ordering paragraphs in this order, coupled with Oncor's current practices, are reasonable measures for a utility to undertake when constructing a transmission line.

II. Conclusions of Law

1. Oncor is an electric utility as defined in PURA §§ 11.004 and 31.002(6).

2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056.
3. SOAH had jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2008 & Supp. 2009).
4. Oncor provided proper notice of the application in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).
5. This docket was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2009).
6. Oncor is entitled to approval of the application, as described in the findings of fact, utilizing route 7, taking into consideration the factors set out in PURA § 37.056(c)(4)(A)-(D) and (F).
7. Route 7 complies with the routing factors of PURA § 37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
8. The proposed transmission line project, as a CREZ transmission project identified in Docket Nos. 33672 and 35665, is exempt under PURA §§ 39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement of proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address 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, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.
9. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient under PURA § 39.904(g)(3) to grant Oncor's application for a CCN in this docket.

10. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

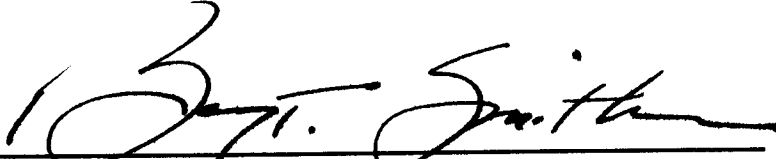
1. Consistent with the settlement agreement, Oncor's application is approved.
2. Oncor's CCN no. 30158 is amended and Oncor's application to build a new 345-kV double-circuit transmission line that extends from the new Oncor Central Bluff switching station to AEP's existing Bluff Creek switching station is approved. The proposed transmission line project will follow route 7 as described in the application.
3. In the event Oncor or its contractors encounter any archaeological artifacts or other cultural resources during construction of the transmission line, Oncor shall cease work immediately in the vicinity of the resource and report the discovery to the THC and take action as directed by the THC.
4. Oncor shall follow the procedures outlined in the following publication for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by APLIC in April, 2005.
5. Oncor shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way.
6. Oncor shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate ROW clearance for the transmission line. In addition, Oncor shall re-vegetate using native species considering landowner preferences and to the maximum extent practical avoid adverse

environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.


7. Oncor shall identify black-capped vereo locations and use best practices to avoid or minimize potential impact on that federally and state listed endangered species.
8. Oncor shall implement erosion control measures as appropriate and return the site to its original contours and grades unless otherwise agreed to by the landowners.
9. Oncor shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviations in the approved route shall only directly affect landowners who received notice of the transmission line in accordance with P.U.C. PROC. Rule 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation.
10. Oncor shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b). In addition, Oncor shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.
11. Entry of this order consistent with the settlement agreement does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the settlement agreement. Entry of this order consistent with the settlement agreement shall not be regarded as binding holding or precedent as to the appropriateness of any principle that may underlie the settlement agreement.
12. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the 15th day of April 2010

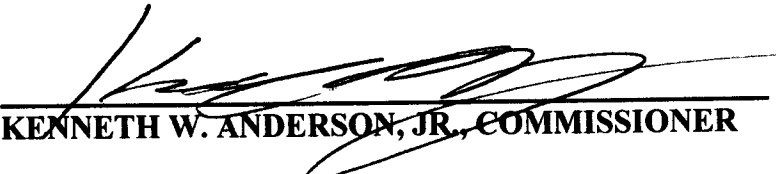
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