



Control Number: 38677



Item Number: 66

Addendum StartPage: 0

**PUC DOCKET NO. 38677  
SOAH DOCKET NO. 473-11-0539**

<p><b>APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED ECTOR COUNTY NORTH – MOSS 138- KV CREZ TRANSMISSION LINE IN ECTOR COUNTY</b></p>	<p>§ § § § § § §</p>	<p><b>PUBLIC UTILITY COMMISSION  OF TEXAS</b></p>
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**ORDER**

This Order addresses the application of Oncor Electric Delivery Company to amend its Certificate of Convenience and Necessity (CCN) No. 30158 to construct a new 138-kV competitive-renewable-energy-zone (CREZ) transmission line extending from Oncor’s new Ector County North switching station to be located on the south side of State Highway 158 approximately 3.8 miles east of Farm to Market Road 866 in Ector County, to the existing Oncor Moss switching station, located approximately two miles north of Interstate Highway 20 in Ector County. The entities identified in finding of fact 20 filed a unanimous stipulation and motion for approval thereof that resolves all issues in this proceeding. Consistent with the stipulation, Oncor’s application is approved.

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 September 29, 2010, Oncor filed an application to amend its CCN for the Ector County North – Moss 138-kV CREZ transmission-line project in Ector County. In the application, Oncor requested approval to construct a new 138-kV transmission line extending from Oncor’s new Ector County North switching station to be located on the south side of State Highway 158 approximately 3.8 miles east of Farm to Market Road

866 in Ector County, to the existing Oncor Moss switching station, located approximately two miles north of Interstate Highway 20 in Ector County. On the same day, Oncor filed the direct testimonies of Robert Holt, Brenda Perkins, and Brandy Smart.

3. On September 29, 2010, Oncor (a) mailed written notice of the application, including a map, to each municipality within five miles of the requested facilities, including the cities of Odessa and Goldsmith; (b) 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 Ector County; (c) provided notice of the application to Goldsmith City Utilities Department, Cap Rock Electric Cooperative, Inc. and Sharyland Utilities, LP; and (d) 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. Oncor also published notice of the Application in the *Odessa American*, a newspaper of general circulation within the county where the CCN is being requested.
4. On October 1, 2010, the application was referred to the State Office of Administrative Hearings (SOAH).
5. On October 1, 2010, Oncor filed an affidavit attesting to the provision of a copy of the environmental assessment and routing study to the Texas Parks and Wildlife Department (TPWD).
6. On October 5, 2010, Order No. 1 was issued, requiring notice information from Oncor and a recommendation from Commission Staff on sufficiency of the application and notice, providing notice of a prehearing conference, and delineating discovery and other deadlines. On October 19, 2010, a corrected version of Order No. 1 was issued.
7. The following parties filed motions to intervene: PDF Trust, Occidental Permian Ltd and OXY USA WTP LP (collectively, Occidental), TTF Ranch, Inc. (via Virgil Trower and Mike Trout), Fidel and Laura Olivas, Ramiro and Leticia Brito, Continental Texas Resources, LLC, Gary and Carol Ward, Clayton Dennis, Nola Hare (Marshall), Arthur Wight, and J.L. Johnson Sr. Ranch Trust.
8. On October 21, 2010, Oncor filed the affidavit attesting to the provision of notice.

9. A prehearing conference was held on November 1, 2010.
10. On October 13, 2010, Commission Staff filed a response to Order No. 1, finding Oncor's application sufficient.
11. On October 21, 2010, Order No. 2 was issued, finding that the application was sufficient.
12. On October 22, 2010, a supplemental preliminary order was issued, adding issues regarding whether Oncor's original request for double circuit certification was supported by the Electric Reliability Council of Texas, Inc. (ERCOT).
13. On October 26, 2010, Commission Staff filed comments on notice, stating that notice was sufficient and that Oncor had complied with the notice provisions of P.U.C. SUBST. R. 22.52(a) and Order No. 1.
14. On November 3, 2010, Order No. 3 was issued, memorializing the prehearing conference, adopting a procedural schedule, and finding that notice complied with all applicable legal requirements.
15. On December 2, 2010, the TPWD filed a letter in the docket.
16. The following intervenors filed direct testimony: J.L. Johnson Sr. Ranch Trust, Arthur W. Wight, PDF Trust; and Occidental. Occidental also filed a statement of position.
17. On December 14, 2010, Commission Staff filed the direct testimony of Kevin Mathis.
18. On December 15, 2010, Order No. 4 was filed, dismissing the following intervenors for failure to timely file statements of position or direct testimony: Virgil Trower and Mike Trout on behalf of TTF Ranch, Inc., Fidel and Laura Olivas, Ramiro and Leticia Brito, Clayton Dennis, Gary and Carol Ward, Clark Long on behalf of Continental Texas Resources, LLC, and Nola Hare (Marshall).
19. On December 22, 2010, Oncor filed the rebuttal testimony of Deborah Boyle, and the supplemental settlement and rebuttal testimonies of Brenda J. Perkins and Brandy Smart.
20. On January 3, 2011, Oncor filed a unanimous stipulation requesting that the Commission approve the application and allow for the construction of the proposed transmission line on

a route consisting of the following links, as described in the application: A4-WW-W-X-A3-N-SS-S-L-K-KK-BB-JJ (settlement route).<sup>1</sup> The unanimous stipulation was made and entered into by Oncor, Commission Staff, PDF Trust, Occidental, TTF Ranch, Inc., Fidel and Laura Olivas, Ramiro and Leticia Brito, Continental Texas Resources, LLC, Gary and Carol Ward, Clayton Dennis, Nola Hare (Marshall), Arthur Wight, and J.L. Johnson Sr. Ranch Trust.

**Application and Project Description**

21. The proposed project consists of a new single-circuit 138-kV transmission line extending from Oncor's new Ector County North switching station to be located on the south side of State Highway 158 approximately 3.8 miles east of Farm to Market Road 866 in Ector County, to the existing Oncor Moss switching station, located approximately two miles north of Interstate Highway 20 in Ector County. The proposed project will use 959.6 kmil ACSS/TW conductor, will be constructed on double-circuit capable steel or concrete poles, and will be located on a right-of-way of 70 feet.
22. Oncor filed 36 routes for the proposed project.
23. The proposed project is a CREZ subsequent project.
24. The length of the proposed transmission line on the settlement route is approximately 20.5 miles.
25. Pursuant to Order No. 2, the application was sufficient.
26. Pursuant to Order No. 3, the notice was adequate.
27. Sufficiency of the application and notice were not contested.
28. Oncor stipulated that it is not seeking certification of a second circuit to be installed on the double-circuit-capable structures described in the application as a part of this proceeding.
29. Completion of the proposed project will accomplish the intended result for the project designated as West B-Moss single-circuit 138-kV transmission line in the CREZ

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<sup>1</sup> The settlement route consists entirely of links that were included in the application and for which notice was provided. However, the settlement route was not one of the 36 routes listed in the application.

transmission plan adopted by the Commission in *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008).

**Routing of the Proposed Transmission Line**

30. Oncor retained PBS&J to prepare an environmental assessment and alternative route analysis (EA) for the proposed project.
31. Oncor considered and submitted a sufficient number of geographically diverse routes for the proposed project.
32. The proposed project complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.
33. Consistent with the stipulation, the proposed transmission line will be constructed on the settlement route.
34. The settlement route complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101.
35. No party to this docket contests the settlement route.
36. There are no potential ramifications to system reliability associated with siting 345-kV lines adjacent to one another, because this docket seeks certification of a 138-kV line.

**Community Values**

37. Public open house meetings were held for the proposed project on January 12, 2010, and August 17, 2010 at the Cavazos Elementary School in Odessa, Texas.
38. Information received from the public open-house meetings and from local, state and federal agencies was considered and incorporated into both PBS&J's routing analysis and the eventual selection by Oncor of preferred and alternative routes.
39. There is one commercial AM radio transmitter located within 10,000 feet of the centerline of the settlement route.

40. There are no FAA-registered airports within 20,000 feet of the settlement route. There is one private, unnamed airstrip within 10,000 feet of the settlement route. There are no heliports within 5,000 feet of the settlement route.
41. There are no significant impacts to any airports, airstrips, or heliports anticipated from construction of the proposed project.
42. The settlement route does not traverse any pasture or cropland irrigated by traveling irrigation systems.
43. 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.

#### **Recreational and Park Areas**

44. No parks or recreational areas owned by a governmental body or an organized group, club, or church are located within 1,000 feet of the settlement route.

#### **Historical Values**

45. The proposed project will have no known impact on historical or archaeological resources.
46. The settlement route neither crosses nor comes within 1,000 feet of known cultural resource sites. Approximately 26,600 feet of the settlement route cross areas of high prehistoric and historic site potential.
47. 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). The utility will take action as directed by the THC.

#### **Aesthetic Values**

48. The settlement route is not within the foreground visual zone of any parks or recreation areas.

49. Approximately 17,857 feet of the settlement route are located within the foreground visual zone of U.S. and state highways.

**Environmental Integrity**

50. Oncor retained PBS&J to prepare an EA for the proposed project.
51. PBS&J contacted the United States Fish and Wildlife Service (USFWS) and the TPWD to obtain information regarding the possibility of encountering any endangered or threatened species in the area affected by the proposed project.
52. PBS&J studied and analyzed potential impacts to water resources, ecology (including endangered or threatened vegetation and fish and wildlife), and land use within the study areas for the proposed project.
53. Oncor and PBS&J appropriately performed an evaluation of the impacts of the proposed project on endangered and threatened species.
54. No significant impacts to wetland resources, ecological resources, or land use are anticipated as a result of the proposed project.
55. Construction of the proposed project will have no significant impact on geological features or resources of the area.
56. 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 Raptor 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.
57. 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 clearance for the transmission line. In addition, the utility shall revegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, the utility shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.

58. 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.
59. 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 right-of-way.

**Goal for Renewable Energy**

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

**Engineering Constraints**

61. The settlement route does not present any engineering constraints that cannot be resolved with additional consideration during the design and construction phase of the proposed project.

**Compatible Corridors**

62. The settlement route utilizes or parallels existing compatible rights-of-way or apparent property boundaries for approximately 88 percent of its length.

**Prudent Avoidance**

63. The proposed project complies with the policy of prudent avoidance.
64. There are two habitable structures located within 300 feet of the centerline of the settlement route.

**Financial Commitments**

65. Pursuant to P.U.C. SUBST. R. 25.174(d)(5), the level of financial commitment by generators is sufficient under PURA § 39.904(g)(3) to approve Oncor's application for this CREZ subsequent project that serves the Central West CREZ.

**Proposed Modifications to the Scope of Work Contained in the CREZ Transmission Optimization (CTO) Study**

66. Oncor has stipulated that it is not seeking certification of a second circuit to be installed on the double-circuit-capable structures described in the application as a part of this proceeding.
67. Oncor does not propose modifications to the scope of work contained in the CTO study.

**Estimated Costs**

68. The total estimated cost for construction of the proposed project on the settlement route is \$23.758 million, including costs associated with substation facilities.
69. The estimated cost of transmission facilities utilizing the settlement route is \$18.059 million. The estimated cost of the Moss station equipment is \$1.9 million. The estimated cost of the new Ector County North station is \$3.799 million.
70. In the CTO study, the estimated cost for the West B-Moss transmission facilities was \$6 million, based on a six mile straight line distance at a \$1 million per-mile cost. The estimated length of the Settlement Route is 20.5 miles.
71. The driver of the divergence in cost estimates is the difference in actual line distance between the endpoints (12.9 miles) as compared to the six mile straight line distance contemplated in the CTO study, as well as the fact that the settlement route is not a straight line route. The per-mile cost estimate for the settlement route is approximately \$0.88 million, which is less expensive than the per-mile estimate contemplated in the CTO study.

**Need for the Proposed Transmission Line**

72. As a CREZ transmission project identified in Docket No. 33672 and *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), the proposed project is exempt under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-11.016 (Vernon 2007 & Supp. 2010) (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**

73. TPWD filed a comment letter in this docket on December 2, 2010.
- 73A. This Order addresses only those TPWD recommendations and comments for which there is record evidence.
74. Oncor must comply with all environmental laws and regulations governing endangered species.
75. Oncor will comply with all applicable legal requirements in constructing the proposed project.
76. No modifications to the proposed project are required as a result of the recommendations and comments made in the TPWD letter.
77. In preparing the EA, PBS&J reviewed TPWD's correspondence in this docket along with TPWD's general comments made in Docket No. 35665. These recommendations were taken into account in preparing the EA.
78. Because of Oncor and PBS&J's inability to access private properties to conduct on-the-ground surveys during development of the EA, PBS&J relied on habitat descriptions from various sources, including the Texas Natural Diversity Database and other sources provided by TPWD, along with observations from field reconnaissance to make the determination for some species regarding the likelihood of habitat present in the area.
79. After a transmission line route has been selected and approved by the Commission, qualified individuals will conduct a field assessment of the entire length of the chosen route to identify water resources, potential migratory bird issues, and threatened or endangered species habitat that may be impacted by the proposed project.
80. Oncor uses permitted biological monitors to ensure compliance with the Endangered Species Act and other applicable regulatory requirements. Additionally, Oncor conducts assessments to determine whether federally listed threatened or endangered species habitat is present.
81. Oncor will utilize best management practices to mitigate the potential impact to all bird species, including the use of flight diverters where appropriate.

82. Oncor's current best management practices are sufficient and therefore no additional permitted biological monitor is necessary during clearing and construction activities to monitor for state-listed plant and animal species.
83. Oncor complies with all aspects of the Migratory Bird Treaty Act.
84. An absolute restriction on vegetation clearing activities from March to August is neither reasonable nor operationally practical.
85. It is neither reasonable nor operationally practical to require Oncor to refrain from disturbing vegetation containing migratory bird nests until any eggs of migratory birds have hatched and young have fledged.
86. It is neither reasonable nor operationally practical to require Oncor to remove old empty nests outside of the nesting season in areas that are scheduled to be cleared.
87. Mitigation measures are determined after a route is approved by the Commission and on-the-ground surveys are completed for the approved route. Should construction impact federally-listed species or their habitat or impact water under the supervision of the U.S. Army Corps of Engineers (USACE), Oncor will coordinate with USFWS or USACE respectively to coordinate any required permitting or mitigation.
88. 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 §§ 11.004 and 31.002(6) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).
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 has jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2010).

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, Commission rules, and the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 (Vernon 2010).
6. Oncor is entitled to approval of the application, as described in the findings of fact, utilizing the settlement route, taking into consideration the factors set out in § 37.056 of PURA and P.U.C. SUBST. R. 25.101.
7. The settlement route complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
8. The proposed project, as a CREZ transmission project identified in Docket Nos. 33672, 35665, and 37902 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)(5), 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 pursuant to 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:

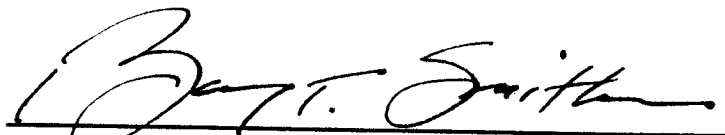
1. Consistent with the stipulation, Oncor's application is approved. Oncor's CCN No. 30158 is amended to include the construction of a new 138-kV transmission line extending from Oncor's new Ector County North switching station to be located on the south side of State Highway 158 approximately 3.8 miles east of Farm to Market Road 866 in Ector County, to the existing Oncor Moss switching station, located approximately two miles north of Interstate Highway 20 in Ector County. The proposed transmission line will follow the settlement route shown on Attachment A to this Order, which consists of the following links: A4-WW-W-X-A3-N-SS-S-L-K-KK-BB-JJ.
2. 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.
3. Oncor shall utilize best management practices to mitigate the potential impact to all bird species, including the use of flight diverters where appropriate.
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 right-of-way 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 implement erosion control measures as appropriate and return the site to its original contours and grades unless otherwise agreed to by the landowners.

8. Oncor shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviation to the approved route shall only directly affect landowners who were sent notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation. Any agreed minor deviations shall not delay the project beyond its Commission-required completion date nor shall any minor deviation add any significant cost to the project.
9. Oncor shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, Oncor shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay the project. Unless these two conditions are met, this paragraph does not authorize Oncor to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.
10. Oncor is required to update the reporting of this project on its 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. Oncor shall file in Project No. 37858 information pursuant to P.U.C. SUBST. R. 25.216(f) and the order in Docket No. 37902.
11. The entry of this Order consistent with the stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the stipulation. The entry of this Order consistent with the stipulation shall not be regarded as binding precedent as to the appropriateness of any principle underlying the stipulation.

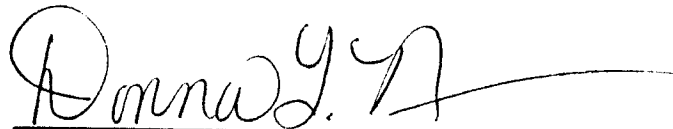
12. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 10<sup>th</sup> day of February, 2011

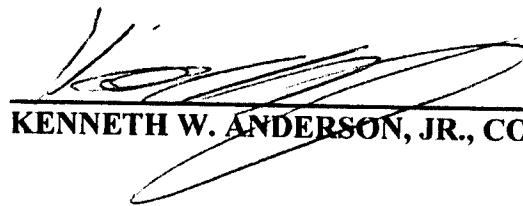
**PUBLIC UTILITY COMMISSION OF TEXAS**



**BARRY T. SMITHERMAN, CHAIRMAN**



**DONNA L. NELSON, COMMISSIONER**



**KENNETH W. ANDERSON, JR., COMMISSIONER**