



Association (Texas Wind Generators) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendments from Ridge, GCPC, Texas Rose, A Couple of Texas Landowners, CenterPoint, LCRA, Oncor, EGSI, Xcel, ETEC, Texas Wind Generators, Public Citizen, Performance Energy Solutions, Inc. (PES), Pedernales Electric Cooperative, Inc. (PEC), El Paso Electric Company (EPE), American Electric Power Company (AEP), Brazos Electric Power Cooperative, Inc. (Brazos), Texas Electric Cooperatives, Inc. (TEC), South Texas Electric Cooperative (STEC), and Cielo Wind Power (Cielo).

In response to questions from the commission staff during the public hearing, Xcel, EPE, Oncor, and LCRA made informational filings identifying transmission line applications that are under development and are expected to be filed before January 1, 2003. These parties also filed written comments requesting that the effective date of the amendments and new rule be postponed so that the additional requirements of the proposed changes do not delay applications that are close to being filed. These parties indicated that substantial efforts and costs have already been incurred in the preparation of applications for a CCN, and to impose additional requirements would unduly delay and increase the cost of the projects.

The commission agrees and delays the effective date of the amendments until January 1, 2003.

*§22.52(a), Notice in electric licensing proceedings**Notice of "Preferred" Route*

Many of the commenters expressed concern that the published changes in the notice requirements applicable to CCN applications eliminates any distinction between the utilities' "preferred" route and any other alternative route. Specifically, AEP stated that "the notice to landowners should not imply that the transmission service provider has not recommended a preferred route." AEP went on to explain that the proposed CCN Application form requires the utility to identify a "preferred route;" thereby creating a disconnect in terminology between the landowner notice and the substance of the application. Several commenters, including AEP and Oncor, further explained that much of the effort expended by the utility in the CCN routing process is to prioritize routes based on expert routing analysis. Some commenters, including Xcel Energy and CenterPoint Energy, expressed concern that not reflecting the fact that some routing prioritization was presented in the application could ultimately be misleading to the public if no mention of a "preferred" route was included in the landowner notice requirements. A Couple of Texas Landowners expressed support for the elimination of the "preferred" designation.

The commission agrees that some reference to a "preferred" route should be retained in the notice requirements. The published proposal deleted all references to a "preferred" route in the notice provisions. Therefore, the rule governing notice requirements will continue to permit the designation of a preferred route in the public and landowner notices. However, the information

given to the public must also reflect the fact that the "preferred" designation is only the utility's designation, and that any of the alternative routes could be selected by the commission. In order to reflect a more balanced perspective of the significance of the term "preferred route", the provisions of the public informational brochure and related approved notice forms are modified to include notice of the existence of a route being designated by the utility as their preferred route, together with an explanation that the commission may select any of the alternative routes.

*Scope of Required Landowner Notice*

Texas Rose and A Couple of Texas Landowners suggested increasing the scope of the landowner notice requirements by defining "directly affected land" to include landowners within 2,000 feet of any newly proposed route. A Couple of Texas Landowners also recommended that the term directly affected land also include all land immediately adjacent to the tract on which a proposed route is located. Many of the commenters, including LCRA, AEP, CenterPoint, Oncor, EGSI, Xcel, ETEC, PEC, TEC, Brazos and EPE opposed expanding the scope of landowner notice to include owners of habitable structures within 500 feet of the centerline of the proposed transmission line. As the current rule requires direct mail notice to only those owners of land whose property is crossed by the project and those having a habitable structure within 200 feet of the centerline of the route, the commenters opposing the expansion of notice expressed concern that additional expense and the increased possibility of contested hearings on transmission projects could be the primary outcome of expanding the notice requirement. AEP and LCRA suggested an alternative approach that would vary the scope of notice depending upon whether the project was located in a rural or urban area. Brazos and CenterPoint expressed concern that

expansion of the notice requirement could, over time, be construed as an expansion of the "prudent avoidance" policy. EGSI noted that an overly contentious and time consuming CCN process could result in an inadequate transmission infrastructure. However, EGSI did propose an expansion of the landowner notice corridor to include owners of habitable structures within 250 feet of the centerline of the proposed route. LCRA objected to the expansion of landowner notice citing the absence of any justification or rationale for including more landowners in the routing process governing transmission lines. LCRA stated that the proposed additional notice requirements will do little more than provide a procedural tool for opponents to the project to instigate delays in the CCN dockets. Oncor questioned the basis for expanding the landowner notice in light of the different environments in which transmission facilities are routed and constructed. Oncor and other commenters suggested that the expansion of the landowner notice to those owning a habitable structure within 500 feet of the project would include persons not genuinely affected by the project, and would not facilitate public participation in the CCN process. Most of the commenters opposing the expansion of the notice corridor cited the increased expense and time required to determine the property owners within the expanded corridor. EPE offered insightful comments on this issue including a suggestion that expansion of public participation is better achieved by public involvement in the early stages of transmission routing. EPE offered an alternative notice strategy that requires the 500 foot notice corridor for higher voltage projects, such as projects greater than 345kv.

The commission believes that expanding the scope of the direct landowner notice of CCN applications to all landowners within 2,000 feet of either side of the centerline of the proposed transmission line route, as suggested by A Couple of Texas Landowners and Texas Rose, is not

an appropriate strategy to increase public participation in the routing of transmission lines. The commission must achieve a balance between the rights of affected landowners and the public need for the timely and efficient development of an adequate transmission infrastructure.

The commission believes that additional public participation in the evaluation of transmission line routing is vital to the long-term integrity of the CCN process, particularly the routing of the larger, more intrusive high voltage transmission lines. The historic emphasis of route design includes close consideration of the habitable structures within 200 feet of centerline of the easement required for all proposed routes. The only change proposed by this rulemaking is to expand the distance that qualifies an owner to be notified of the CCN application by direct mail. The commission disagrees with the opponents of this expansion of the CCN notice requirement who assert that no public benefit will be accomplished by providing additional landowners with notice of the transmission line project. Most proposed transmission routes are evaluated and prioritized by utilities and their consultants without setting foot on the property. Much of the relevant information required to be assessed by the commission under applicable law for the routing of transmission lines is best known by the landowner. The existing corridor of notice which is limited to 200 feet on either side of an approximated "centerline" of an easement that has not been cited by survey acts to deprive the commission of valuable participation by those who know the property in far greater detail than any utility or environmental consultant. With projects that can easily involve easements of 160 feet in width, with transmission facilities that can be in excess of 150 feet in height, the strict notice limitations of the existing rule could result in the permanent placement of a major transmission facility less than 200 feet from a habitable structure without the owner even receiving notice and opportunity to participate in the CCN

process. Under PURA §37.056, the commission must consider various factors including community values, historical and aesthetic values, and environmental integrity. The proximate area for inclusion in such analyses is not defined by statute; however, these factors are necessarily stated in broad, encompassing terms. Any meaningful assessment of these factors necessarily involve a physical corridor greater than the 200 foot scope of landowners now receiving direct mail notice of the CCN application. Many of the commenters who oppose the expansion of landowner notice equate participation of the public with contentious opposition to transmission lines that will cause delays and greater expenses. The commission disagrees with these commenters in that the expanded notice to landowners seeks to give those landowners in the proximate area the opportunity to either intervene in the proceedings on a formal basis or to provide comments on an informal basis without the need to formally intervene. Experience shows that most landowners along the proposed routes do not file formal interventions. In many instances, even the landowners who file formal interventions do not remain active in the case. Those landowners who participate in CCN applications often provide critically important information concerning the community, the environment, and the associated values related to their property that would not have been presented without their participation. Without the participation of landowners, the costs associated with environmental assessments that include detailed analysis of specific land through on-site observations would be cost-prohibitive for the CCN applicants.

Many of the commenters appear to conclude that any habitable structure that is further than 200 feet from the approximated centerline of a proposed easement could not possibly be "affected" by a transmission line. The commission disagrees with both the conclusion and the assumptions

implicit in the conclusion of these commenters. The issue before the commission in a CCN case is whether the proposed line satisfies the statutory requirements as interpreted by the commission. The commission does not interpret the current 200 foot distance as an absolute, conclusive prohibition either as to the distance required to be maintained from a habitable structure or as an absolute, conclusive limitation as to who is "affected" and who is not. The determination of the impact of a proposed route upon a landowner in terms of the statutory criteria contained in PURA §37.056 is the subject matter of the hearing. Any suggestion that the commission predetermine the potential impact on a landowner in advance of the hearing through restriction of the scope of public notice is contrary to the due process that is the heart of the CCN requirement.

The hearing with regard to routing a transmission facility in the CCN process typically involves the discernment of the best route, based on alternatives. By providing expanded landowner notice, the area of land eligible for consideration at the hearing is broadened, which may shorten, not delay, the overall process time required for full consideration of a CCN application. The commission disagrees with EGSI's assessment that the "not in my back yard" sentiment governs the siting of transmission facilities in Texas. The commission also disagrees with the comments of LCRA that suggest that landowner notice is unnecessary aggravation and inconvenience to those persons who are on routes that are not the preferred route. Experience shows that any route may be selected by the commission, provided that adequate notice has been given. Any breach of the notice requirements cause a day for day extension of the case. Whether the tone of a CCN application case is adversarial is in significant measure determined by the utility and their process of interacting with the public. The commission does not believe that the landowners feel

that receiving notice of their opportunity to participate in commission proceedings is inconvenient or an aggravation. To the contrary, the commission believes that part of the historic adversarial response to transmission lines will be abated by the new rules. Under current procedures, most landowners do not understand the commission's CCN process. Under the proposed rule, all persons within the expanded landowner notice area will receive a brochure that helps explain the CCN process and the commission's role in that process. This will lessen the frustration for landowners who may feel that they were not timely involved in the process or were not well informed.

The commission disagrees with the comments expressing a lack of justification for the expansion of landowner notice for those owning a habitable structure in the area proximate to the routes under consideration in CCN cases. The commenters opposing expanded notice appear to improperly interpret the current 200 foot notice requirement as a limitation upon legal standing for the purpose of intervention, and thereby confuse the expanded notice requirement with expansion of those authorized to intervene. The commission has not placed a strict limitation of standing to intervene to only those landowners that are eligible for direct mail notice. PURA §37.054 requires the commission to give notice of a CCN to interested parties and hold a hearing if one is requested. This statutory mandate does not limit the scope of interested parties to those landowners within a specified distance from the proposed route's centerline. The duty of the commission is to give adequate, appropriate notice based on the knowledge and experience of the commission in administering its statutory responsibilities. Achieving a balance between the requirements of due process and efficient use of resources compels the commission to design a practical limitation upon the notice corridor based upon the voltage of the proposed facility. The

commission believes that establishing a 300 foot notice requirement for transmission lines of 230kV or less and a 500 foot notice requirement for transmission lines over 230kV is a more reasonable distinction than altering the notice based upon the urban or rural setting of the proposed facility. This two-tier approach to the expansion of landowner notice reflects the greater public interest and involvement in the 345kV transmission lines, and takes into account the various concerns expressed by the commenters opposing the expansion of notice.

*Scope of Public Meeting Notice*

AEP opposed the expansion of notice of the required public meeting that precedes the actual filing of the CCN. AEP explained that at the time of the public meeting numerous preliminary routes are still under consideration; therefore, direct mail notice to all property owners within 5000 feet of any alternative route would be very difficult and expensive. EPE suggested that the 500 foot notice requirement is an appropriate method of increasing public participation in the early stage of transmission routing.

The commission agrees that establishing a specific notice requirement for the public meeting will facilitate greater public participation. The commission disagrees that the specific notice requirement is burdensome since the applicant must determine the number of habitable structures on all routes prior to the public meeting. Also, many of the utilities currently give direct mail notice of their public meetings. However, the commission believes that it is reasonable to limit the notice of the public meeting to correspond to the two-tier notice requirement applicable to

landowners. Therefore, the notice for public meetings will mirror the direct mail notice required for CCN applications.

*Certified Mail Requirement*

Most of the commenters objected to the use of certified mail for the purpose of providing notice to directly affected landowners. Those commenters opposing the certified mail requirement objected to the additional expense and the possibility that landowners would refuse the certified mail or may be inconvenienced by having to travel to the local post office to obtain the mail.

While the commission does not agree with these comments, direct mail by first class mail may not be the source of historic delivery problems; rather the problem may have arisen from inaccurate tax rolls. In the case of erroneous tax rolls, the certified mail requirement would not cure the problem. Therefore, the commission believes that a more prudent course of action is to leave the current first class mail requirement in place with the exception of requiring priority mail, receipt confirmation, for any notices to landowners that were overlooked or missed by the first mailing of notice. Those persons receiving such notice will have 15 days from the date of delivery to intervene.

*Request for Docket Assignment*

Oncor requested that the commission expand the time allowed for filing the initial pleading to obtain the docket number for inclusion in the application and notice letters.

The commission agrees, and expands the time to not earlier than 25 days prior to the filing of the application.

*Deletion of Notice Letter Language*

Brazos stated that they desired to keep the specific notice landowner language in the procedural rule rather than placing it in an approved form, to assure that the notice requirements would be known and to prevent confusion.

The commission disagrees that removal of the notice language from the procedural rule will result in confusion. The commission declines to make the change suggested by Brazos.

*"Other Property Interest"*

CenterPoint commented that the inclusion of the term "other property interests" as a trigger to the notice requirement could inadvertently cause notice requirements for railroad crossing permits and similar non-property interests. Therefore, CenterPoint requested that the acquisition of certain permits be excluded from the events triggering the notice requirements of this rule.

The commission does not agree that the term "other property interests" would include the permits cited by CenterPoint. Therefore, the commission believes that the language proposed by

CenterPoint is not necessary. The inclusion of "other property interests" was initiated as a result of comments received from Reliant Energy during the early phases of this project.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically PURA §37.054 which requires the commission to give notice to interested parties of an application for a certificate of convenience and necessity.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, and 37.054.

**§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 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, once each week for two consecutive weeks beginning with 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.

(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) and that a letter requesting intervention should be received by the commission by that date.

(B) The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all

preferred and 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.

(C) The notice shall state a location where a map may be reviewed and from whom a copy of the map may be obtained. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the preferred locations and alternative locations of the proposed facility, 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.

(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) 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, including the preferred location and any alternative location of the proposed facility. 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.
- (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.
  - (A) If the owner's land is directly affected by the approved route, the notice shall consist of a copy of the final order.

(B) If the owner's land is not directly affected by the approved route, the notice shall consist of a brief statement that the land is no longer the subject of a pending proceeding and will not be directly affected by the facility.

(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; and the dates upon which the notice was 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 rule, as adopted, 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.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

---

**Rebecca Klein, Chairman**

---

**Brett A. Perlman, Commissioner**