

PROJECT NO. 25515

ELECTRIC UTILITY CCN	§	PUBLIC UTILITY COMMISSION
RULEMAKING AND FORM	§	
CHANGES	§	OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §22.52
AS APPROVED AT THE JULY 11, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §22.52 relating to Notice in Licensing Proceedings. The proposed amendment will broaden public participation in commission proceedings relating to utility applications for Certificates of Convenience and Necessity (CCN) for electric transmission facilities. Project Number 25515 has been assigned to this proceeding.

The commission proposes to amend subsection (a)(1) to require that applicants for CCNs provide notice to the public that includes the commission's docket number and caption of the case as assigned by the Central Records Division. In the case of electric transmission cases, the amendment requires the utility to file a preliminary pleading to obtain the docket number and caption in order for the application to include copies of the actual notices sent for publication and issued to landowners for review by commission staff. By having the commission's docket number and caption in the notice, public participation in these CCN cases will be facilitated in a variety of ways including immediate access to filed documents on the commission's interchange, and the avoidance of time delays in properly routing and filing comments or motions to intervene that arise when landowner letters do not refer to the specific docket number of the case.

The commission proposes to amend subsection (a)(1)(A) by deleting the specific language required for inclusion in CCN published notice, and replacing the deleted language with a requirement that the published notice include all information contained in the standard format for published notice established as a commission prescribed form in accordance with Procedural Rule §22.80 of this title (relating to Commission Prescribed Forms). This amendment will permit the commission to revise its applicable phone numbers, websites, or reference to additional information without the necessity of a full rule amendment. This amendment retains the requirement for published notice to include commission established language in accordance with the procedure designed to develop and amend commission-required forms.

The commission proposes to amend subsection (a)(1)(B), (C), (3) and (3)(A) to remove all references to the term "preferred route." In the context of public notice, identification of a route as preferred may be misinterpreted or misunderstood by landowners. To avoid confusion over the use of the term "preferred," this procedural rule and the required public notices will not use that term. Rather, all proposed routes will be given equal status in the notice process.

The commission proposes to amend subsection (a)(3) to clarify that notice to landowners must be mailed on the same day the CCN application is filed. This amendment mandates the issuance of notice simultaneously with the filing of the CCN, thereby avoiding delays in the development of a procedural schedule in the proceeding. This amendment also avoids disputes

relating to the determination of the deadline for intervention by providing certainty as to the start date for the running of the 45 day intervention period as established by Procedural Rule §22.104 of this title (relating to Motions to Intervene). In addition, the commission proposes an amendment to this section that broadens the scope of landowners that must be sent notice of CCN applications for transmission facilities. The current rule requires that owners of property having a habitable structure located within 200 feet of the proposed facility must be sent notice. The amendment proposes to change the 200 feet distance to 500 feet. This amendment is intended to broaden the scope of public participation in the process of routing transmission lines that are subject to the commission's authority.

The commission proposes to amend subsection (a)(3)(A) by deleting the specific language required for inclusion in a CCN notice letter to landowners, and replacing the deleted language with a requirement that the landowner notice include all information contained in the standard format for landowner notice established as a commission prescribed form in accordance with §22.80. This amendment will permit the commission to revise its applicable phone numbers, websites, or references to additional information without the necessity of a full rule amendment. This amendment requires that landowner notice letters include commission established language in accordance with the procedure designed to develop and amend commission-required forms. In addition to the standard format for the landowner notice letter, this amendment requires the applicant to include a newly created, commission prescribed brochure with the formal notice letter. The brochure is intended to give landowners basic information about the CCN process

that will be followed in this case. The brochure also contains a form that landowners may complete and file with the commission for the purpose of intervening in the case at the commission. These amendments, together with the new forms are intended to permit interested landowners to better understand the CCN process and facilitate timely intervention in the contested case proceeding.

The commission proposes to amend subsection (a)(3)(B) to delete the sentence that provides that "applicants may provide either a map of the entire proposed and alternative routes or maps for each county." This sentence is deleted because it conflicts with the previous sentence that requires that the map enclosed with the landowner notice must meet the requirements of subsection (a)(1)(B).

The commission proposes to amend subsection (a)(3)(D) by requiring that the notice letter, landowner brochure and intervention form be sent to the landowners by certified mail, return receipt requested. The current rule requires that the landowner notice be sent by regular first-class mail. The proposed amendment requiring delivery by certified mail is intended to provide greater certainty to the process of giving notice of a proposed transmission line to landowners whose property may be affected by the new facilities. Adding certainty to this process is valuable to the utility, the landowners and the commission. If a number of certified mail receipts are returned without signature, the utility will be alerted of notice problems, including outdated ownership records, at a very early stage of the proceeding. Historically, if the utility becomes

aware of landowners who did not receive notice, supplemental notice and affidavits are required by the current rule. In the case of regular mail, the utility may become aware of non-delivered notices only after an extended period, a circumstance that acts to the detriment of the landowners not receiving notice, and to all participants to the case, since delays in the case are typically allowed to permit newly noticed landowners to file testimony and undertake discovery on other parties. By using certified mail, return receipt requested, notice deficiencies are reduced, and the potential for delays in the proceeding are significantly reduced.

The commission proposes to amend subsection (a)(3)(E) by adding a requirement that the utility immediately notify the commission by written pleading in the event that an owner of directly affected land did not receive notice. This amendment allows for timely reconsideration of the procedural schedule, including revised intervention dates for newly noticed landowners. A formal pleading that indicates the notice deficiencies permits all parties to be on notice that a delay in the case may be imminent. This is particularly significant since landowners who wish to attend the hearing on the merits in Austin must make travel arrangements well in advance of the actual hearing dates, and deserve as much notice of potential delays or changes in the schedule as possible. The commission also proposes to require a revised affidavit of notice from the applicant attesting to the compliance with the notice requirements for the supplemental notice to landowners who were omitted from the initial notice list.

The commission proposes to amend subsection (a)(4) by adding a requirement that the initial public meeting to inform the public of the intention of routing proposed transmission facilities in an area prior to the formal filing of an application expressly provide that notice of that meeting is mailed by regular first-class mail to owners of property within 500 feet of all alternative routes. This amendment is intended to provide additional structure to the very important preliminary public meeting or open house sponsored by the utility to bring a community's awareness to the possibility of a new transmission line in the area.

Mark Gentle, Administrative Law Judge, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Gentle has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be greater public knowledge of and participation in commission proceedings relating to the review of applications for new transmission facilities subject to the commission's jurisdiction. These amendments provide for the timely intervention of landowners in transmission line contested cases. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. It is anticipated that any additional costs that arise from the additional notice requirements, mailing costs, and intervention requests that may be borne by affected utilities will be offset by savings derived as a result of the amendments. Specifically, the amendments are intended to resolve

notice and intervention disputes at a much earlier phase of these cases, and the benefit of timely, informed public participation will result in more appropriate and acceptable routes, thus reducing administrative and litigation costs that would otherwise be incurred by the utility.

Mr. Gentle has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, September 4, 2002 at 1:30 p.m., in the Commissioners' Hearing Room.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission is also requesting comments concerning the proposed brochure and standardized forms. Copies of the proposed forms and brochure

may be obtained from the commission's Central Records, the commission's Interchange, and the commission's website (www.puc.state.tx.us) under Project Number 25515. All comments should refer to Project Number 25515.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998 Supplement 2002) (PURA), which provides the Public Utility 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 37.051 — 37.057.

§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 ten 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.~~also include the following statement in the first paragraph: "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 of Texas, 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 notice shall state the date established for the deadline for intervention in the proceeding is (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 location and any~~

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) (No change.)

(3) Applicant shall, on the date it files ~~upon filing~~ 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 ~~500~~²⁰⁰ feet of the proposed facility.

(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. contain the following statement in the first paragraph of the notice printed in bold-face type: "Your land may be directly affected in this proceeding. If the preferred route or one of the alternative routes requested under the certificate is approved by the Public Utility Commission of Texas, the utility will have the right to build a facility which may directly affect your land. This proceeding will not determine the value of your land or the value of an easement if one is needed by the utility to build the facility. If you have questions about this project, you should contact (name of utility contact) at (utility contact telephone number). If you wish to participate in this proceeding by becoming a party or to comment upon action sought, you should contact the Public Utility Commission of Texas, 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. If you wish to participate in this proceeding by becoming a party, the deadline for intervention in the proceeding is (date 45 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." 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. ~~Applicants may provide either a map of the entire proposed and alternative routes or maps for each county.~~
- (C) (No change.)
- (D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by certified ~~first class~~ mail, return receipt requested, 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) 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 to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission ~~notify the commission that such supplemental notice has been provided.~~

(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 500 feet of any alternative route.

(5) - (6) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 15th DAY OF JULY 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**