

PUC DOCKET NO. 40953
SOAH DOCKET NO. 473-13-2490

14 JUN 25 AM 11:28
FILED

COMPLAINT OF JOHNNY H. VINSON § PUBLIC UTILITY COMMISSION
AND ELOISE VINSON AGAINST §
ONCOR ELECTRIC DELIVERY §
COMPANY, LLC § OF TEXAS

INTERIM ORDER – PHASE I

This interim order addresses the complaint of Johnny and Eloise Vinson against Oncor Electric Delivery Company, LLC that Oncor violated the Commission’s final order in Docket No. 38324.¹ The Vinsons assert that the as-built location of the Willow Creek-to-Hicks Competitive Renewable Energy Zone (CREZ) line, as it crosses the northwest corner of the Vinsons’ ranch in Wise County, Texas, represents a deviation from the route stipulated to by the intervenors in Docket No. 38324 and subsequently approved by the Commission in the final order of that docket. The Vinsons further assert that Oncor did not obtain their consent to deviate, as required by ordering paragraphs 9 and 17 of the final order.

The Commission referred this docket to the State Office of Administrative Hearings (SOAH) on February 11, 2013. In its amended preliminary order, the Commission split this docket into two phases.² Phase I is limited to determining the location of the Commission-approved settlement route and whether or not Oncor deviated from that route. Phase II will determine whether the Vinsons consented to the deviation and will determine the appropriate remedy if Oncor violated the final order in Docket No. 38324.

On March 25, 2014, the SOAH administrative law judge (ALJ) issued a proposal for decision (PFD) finding in favor of Oncor on phase I issues and recommending the Commission deny the Vinsons’ complaint without proceeding to phase II of the docket. Specifically, the ALJ found that the Commission-approved route (Modified Route 368 approved in Docket No. 38324)

¹ *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek-Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant and Wise Counties*, Docket No. 38324, Order (Dec. 13, 2010).

² Amended Preliminary Order at 10-12 (May 21, 2013).

180

is coincident with the existing Brazos Electric Cooperative, Inc. 69-kV transmission line and consequently that the route could be precisely located on the ground.³ The ALJ also found that the final order in Docket No. 38324 authorized Oncor to adjust the as-constructed location of the Willow Creek-to-Hicks line as necessary to avoid engineering constraints encountered during the design and construction phases of the project.⁴ The ALJ's decision was based on two factors: (1) that finding of fact 78 in the final order gave Oncor the flexibility to adjust the location of the line to avoid engineering constraints;⁵ and (2) Oncor's adjustment of the location of the line was consistent with "good utility practice."⁶

The Commission adopts in part, and rejects in part, the ALJ's conclusions. The Commission agrees with the ALJ's finding that the location of the Commission-approved route is coincident with the existing Brazos 69-kV transmission line, and that the route can be located precisely on the ground. The Commission also agrees that the as-built location of the line is approximately 160 feet, on average, south of the Commission-approved route.⁷ However, the Commission rejects the ALJ's conclusion that Oncor was authorized to unilaterally adjust the location of the line. Under the facts of this case, because the Vinsons and Oncor reached an agreement regarding the precise location of the transmission facilities to be constructed on the existing Brazos 69-kV transmission line, the Commission finds that the location of the Willow Creek-to-Hicks line as built is a deviation from the Commission-approved route. The Commission's decision is informed by the ALJ's determination that the Commission-approved route could be located precisely along the existing Brazos 69-kV line, the approximately 160-foot average distance between the Commission-approved route and the as-built location of the line, and that approving a route along an existing transmission line created an expectation that the route would follow that existing line. Because the Commission decides that Oncor has deviated from the Commission-approved route, this docket will be remanded back to SOAH for phase II.

³ Proposal for Decision at 17, 23 (Mar. 25, 2014). (PFD).

⁴ *Id.* at 23-24.

⁵ *Id.* at 27-28.

⁶ *Id.* at 25-28.

⁷ *Id.* at 27, 34.

To reflect its decisions, the Commission deletes findings of fact 28, 29, 34, 47, 59, 61, and 62; and conclusions of law 4, 5 and 6; adds new findings of fact 32A and 34A; and conclusions of law 6A and 6B; and modifies findings of fact 53 and 63.

The Commission deletes finding of fact 57, because it is irrelevant to the location of the line or any other phase I issue. The Commission deletes finding of fact 65, because it is irrelevant to any phase I issue. The Commission also adds finding of fact 19A to accurately reflect the procedural history of this docket. The Commission modifies finding of fact 50 to reflect that other issues may have, in part, prevented Oncor from constructing the line along the Commission-approved route. The Commission also modifies finding of fact 60 to remove descriptive language that is unnecessary due to the inclusion of a specific distance in that same finding. In addition, the Commission makes numerous stylistic changes to the remaining numbered paragraphs.

The Commission's conclusions in this interim order apply only to the facts established in this docket.

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

I. Findings of Fact

Procedural History

1. On November 12, 2012, Johnny H. and Eloise Vinson filed a formal complaint against Oncor Electric Delivery Company, LLC before the Public Utility Commission of Texas. The complaint alleged that the planned construction of the CREZ Willow Creek-to-Hicks transmission line on the Vinsons' property was creating a gap between easements encompassing approximately 10.9 acres and requested that Oncor be ordered to cooperate with the Vinsons to address the concern. The Willow Creek-to-Hicks line was approved in *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek-Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant and Wise Counties*, Docket No. 38324 (Dec. 13, 2010).
2. On February 11, 2013, the Commission referred this complaint case to SOAH.

3. On March 1, 2013, a preliminary order was issued by the Commission with the following two issues:
 - (a) *Did Oncor violate ordering paragraph nos. 9 or 17 of the Commission's order in Docket No. 38324?*
 - (b) *If Oncor did violate the order in Docket No. 38324, what is the proper remedy?*
4. On March 6, 2013, the Vinsons filed an amended complaint alleging that the as-built Willow Creek-to-Hicks line deviates from the route approved by the Commission, and seeking, *inter alia*: (a) an emergency cease and desist order to halt construction of the Willow Creek-to-Hicks line on the Vinsons' property; (b) action by the Attorney General to seek temporary and permanent injunctive relief; and (c) a declaratory order from the Commission.
5. On March 7, 2013, a prehearing conference was convened. Counsel for the Vinsons, Oncor, and Staff were present.
6. On March 29, 2013, the ALJ issued SOAH Order No. 4 returning the matter to the Commission for consideration of the amended complaint and the new issues it raised.
7. On April 12, 2013, the Commission ordered that the parties submit briefing on certain threshold legal and policy issues related to the amended complaint.
8. On May 21, 2013, the Commission issued an amended preliminary order dividing the proceeding into two phases. The issues to be addressed in phase I of the proceeding are:
 - (a) *What is the location of the settlement route, as it crosses the Vinsons' property approved by the Commission in Docket No. 38324? In answering this issue, please address the location, relative to other existing easements on the property, property lines, and other routes proposed in Docket No. 38324.*
 - (b) *How precisely can the approved settlement route be located on the ground given the scale of the maps that identify the settlement route?*
 - (c) *Has Oncor begun construction of its transmission line on the Vinsons' property? If so, when did it start and when did it complete construction or when does it anticipate completing construction on the Vinsons' property? If not, when does Oncor anticipate starting and completing construction on the Vinsons' property?*
 - (d) *When does Oncor anticipate energizing the transmission line?*

(e) Has Oncor deviated from, or will Oncor's planned route deviate from the settlement route approved by the Commission in Docket No. 38324 on the Vinsons' property? If so, what is the location of the deviated route in relation the Commission-approved route?

9. On December 3, 2013, the Vinsons filed a second amended complaint.
10. The hearing on the merits commenced on December 12, 2013, and concluded on December 16, 2013.

Docket No. 38324

11. On June 16, 2010, Oncor filed an application to amend its certificate of convenience and necessity (CCN) for the 345-kV CREZ Willow Creek-to-Hicks line. *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Willow Creek-Hicks 345-kV CREZ Transmission Line in Denton, Parker, Tarrant and Wise Counties*, Application, Docket No. 38324 (June 16, 2010). The Willow Creek-to-Hicks line was proposed to connect Oncor's Willow Creek Switching Station to Oncor's new Hicks Switching Station, traveling approximately 40 miles through Denton, Parker, Tarrant, and Wise Counties.
12. The Vinsons, owners of a 3,500-4,000 acre ranch in the Willow Creek-to-Hicks line study area, intervened and participated in Docket No. 38324. The Vinsons' property at issue in this proceeding is located in the northwest corner of the ranch, also designated as tract 147 on maps attached to the CCN application.
13. On June 17, 2010, Docket No. 38324 was referred to SOAH.
14. On October 4, 2010, the first day of the hearing on the merits, Oncor reached an agreement with all parties participating in the hearing, including the Vinsons, which resolved all the routing issues. The settling parties agreed to support approval of Modified Route 368. This included Link PPPP and Modified Links ZZ, BBB, and EEE that crossed the Vinsons' property.
15. On October 14, 2010, Oncor filed the settlement agreement with the signatures of some of the parties thereto.

16. On October 19, 2010, Oncor filed a motion for approval of the previously filed settlement agreement and remand of settled case, which included additional signatures to the settlement agreement received since its initial filing.
17. The Vinsons' signature was not included in the October 14, 2010, or October 19, 2010, filings of the settlement agreement.
18. Between October 14, 2010 and early November 2010, Oncor and the Vinsons continued to negotiate the routing of the Willow Creek-to-Hicks line on the Vinsons' property.
19. On November 2, 2010, Oncor submitted a proposed final order for Commission consideration.
- 19A. On November 2, 2010, the Commission's Docket Management Section filed a proposed order.
20. On November 5, 2010, Oncor and representatives for the Vinsons attended a settlement meeting.
21. On November 9, 2010, Oncor filed a second supplement to the settlement agreement, supplementing its earlier filings to include, among other things, the Vinsons' recently-acquired signatures.
22. On November 15, 2010, the Vinsons filed a joint request for corrections to the proposed order, asking the Commission to modify finding of fact 44 in the proposed order to include the following underscored language: "Oncor will underbuild on the same structures as the Proposed Transmission Line Project the existing Oncor 138-kV Sunset - Rhome transmission line on a portion of Link ZZ, and Links BBB and EEE (as those links have been modified by the Settlement Agreement or by agreement with landowners) until approximately the southern border of Tract 154."
23. On December 2 and 8, 2010, the Commission held open meetings, during which Oncor's application was considered.
24. On December 13, 2010, the Commission entered its Order in Docket No. 38324, which approved Oncor's application (referenced hereafter as the CCN order).
25. Modified Route 368 is depicted on a map attached to the settlement agreement.

26. Finding of fact 42 in the CCN order directed Oncor to use monopoles on the portion of the Willow Creek-to-Hicks line crossing the Vinsons' property: "In accordance with the settlement agreement, Oncor will construct the proposed project on monopoles for the portion of the settlement route that begins on the east side of FM 718 on Link PPPP and ends at the Hicks Switching Station, for the portion of Link R that crosses tracts 309 and 310."
27. Finding of fact 43 in the CCN order directed that Oncor underbuild an existing 69-kV Newark-Rhome transmission line owned by Brazos Electric Cooperative, Inc. on the same structures as the Willow Creek-to-Hicks line on Link PPPP and a portion of Link ZZ: "Oncor will underbuild on the same structures as the proposed transmission-line project the existing Brazos 69-kV Newark-Rhome line on Link PPPP starting on the western boundary of Tract No. 147 and continuing approximately due east on Link PPPP and Link ZZ until Link ZZ turns to the southeast just west of Farm to Market Road 3433."
28. DELETED.
29. DELETED.
30. Ordering paragraph 9 in the CCN order stated: "Oncor shall cooperate with directly affected landowners to implement minor deviations in the settlement route to minimize the impact of the transmission line. Any minor deviations in the settlement 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."
31. Ordering paragraph 17 in the CCN Order stated: "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. 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.”

Line Construction and Location

32. Oncor completed construction and energized the Willow Creek-to-Hicks line on June 30, 2013.
- 32A. Oncor did not seek Commission approval to deviate from the Commission-approved route prior to constructing and energizing the Willow Creek-to-Hicks line.
33. Modified Route 368 approved in Docket No. 38324, tracked an existing Brazos 69-kV transmission line and pipeline easements across the northwest corner of the Vinsons’ property.
34. DELETED.
- 34A. The existing Brazos 69-kV line can be located precisely on the ground.
35. The Brazos 69-kV transmission line easement width is 45 feet. The requisite easement width for the Willow Creek-to-Hicks line is 100 feet.
36. Five pipelines (four gas and one water) are located parallel to and in the immediate vicinity of the Brazos 69-kV transmission line on tract 147. These five pipelines are immediately north of the as-constructed location of the Willow Creek-to-Hicks line.
37. Oncor’s environmental consultants used pipeline data received from the Railroad Commission of Texas (RCT) to locate pipelines on maps in the Environmental Assessment. Because such data can be flawed, utilities must specifically locate the pipelines before physical construction of a transmission line can begin.
38. The RCT makes no claim as to the data’s accuracy or completeness of the pipeline data provided to persons using the data such as Oncor.
39. While Oncor and the Vinsons knew there were pipelines in the immediate vicinity of the routing corridor on tract 147 while Docket No. 38324 was pending, neither party knew the exact number and location of the pipelines.

40. The Vinsons' representatives in Docket No. 38324 communicated to Oncor that they did not know the number and location of the pipelines on the Vinsons' property when settlement discussions were being held.
41. The easement for one of the pipelines on tract 147 was not recorded when Oncor developed its Environmental Assessment.
42. At least one of the gas pipelines on tract 147 is physically located outside of its recorded easement in the northwest corner of the Vinsons' property.
43. In multiple locations, the pipeline easements cross under the Brazos 69-kV transmission line.
44. Overlapping high voltage transmission lines with gas and water pipelines can be dangerous during construction, operation, and maintenance of all of the facilities. Typically, electric utilities do not overlap new transmission line easements with existing pipeline easements.
45. Oncor is obligated to construct, operate, and maintain utility facilities in a safe, reliable, and cost effective manner, consistent with good utility practice.
46. The Commission did not prescribe specific techniques to use during transmission line construction in the CCN Order.
47. DELETED.
48. Good utility practice is defined in P.U.C. SUBST. R. 25.5(56) as follows: "Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region."

49. As required by P.U.C. SUBST. R. 25.195(b), a transmission service provider such as Oncor must “plan, construct, operate and maintain its transmission system in accordance with good utility practice...”
50. Good utility practice and safety concerns may have prevented Oncor from constructing the Willow Creek-to-Hicks line within the pipeline easements. Specifically, Oncor had concerns about compromising the integrity of the pipelines during excavation.
51. Engineering safety standards could have been violated by operating the energized Willow Creek-to-Hicks line in close proximity to the pipelines.
52. Consistent with good utility practice, Oncor determined that the Willow Creek-to-Hicks Line must be constructed south of the pre-existing utility corridor.
53. The as-constructed Willow Creek-to-Hicks line in the northwest corner of the Vinsons’ property runs parallel and south of the pre-existing easements, including the easement for the Brazos 69-kV transmission line.
54. The as-constructed Willow Creek-to-Hicks line is approximately 159.57 feet south of the mapped settlement route, on average, as it crosses the northwest corner of the Vinsons’ property.
55. There is an approximate 40-foot gap between the Willow Creek-to-Hicks line easement and the pre-existing pipeline easements to the north on the Vinsons’ property.
56. The easement for the Willow Creek-to-Hicks line is not adjacent to the southernmost pipeline easement along their entire lengths because the pipeline easements are variable in width and divert from a straight direction at different locations up and down along the Willow Creek-to-Hicks Line.
57. DELETED.
58. The landowner to the north of tract 147 on the Vinsons’ property was not a party to Docket No. 38324, was not a signatory to any form of settlement agreement, and would not give Oncor an easement across his property for the Willow Creek-to-Hicks line.
59. DELETED.

60. The physical location of the Willow Creek-to-Hicks line is in proximity to Modified Route 368 on tract 147 as depicted on photographs at the western edge of the Vinsons' property. The northern edge of the easement for the Willow Creek-to-Hicks line is approximately 40 feet from the easement of the southernmost pipeline lying south of the Brazos line in the northwest corner of the Vinsons' property.
61. DELETED.
62. DELETED.
63. The as-constructed line is not in the exact location represented on the map attached to the Settlement Agreement.
64. Oncor will underbuild the Brazos 69-kV transmission line on the Willow Creek-to-Hicks Line once this proceeding is completed. The underbuild includes removal of the existing 69-kV structures.
65. DELETED.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Texas Utilities Code §§ 14.001, 15.051, and 17.157.
2. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code § 2003.049 and Texas Utilities Code § 14.053.
3. Notice of the prehearing conference and hearing on the merits complied with Subchapter D of the Commission's Procedural Rules and with Texas Government Code § 2001.052.
4. DELETED.
5. DELETED.
6. DELETED.
- 6A. Oncor has deviated from the Commission-approved route in constructing the Willow Creek-to-Hicks line and, therefore, there is a need to consider the phase II issues.

- 6B. When Oncor determined that the route approved by the Commission could not be used, it needed to obtain landowner permission to deviate from that route under either ordering paragraph 9 or 17 of the Docket 38324 final order or obtain Commission approval for a modified route.

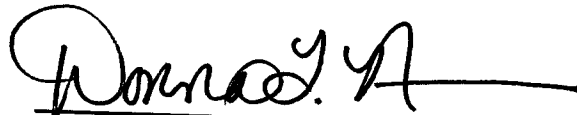
III. Ordering Paragraphs

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

1. The Vinsons' complaint against Oncor is remanded to SOAH for consideration of phase II issues, as outlined in the amended preliminary order.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 25th day of June 2014.

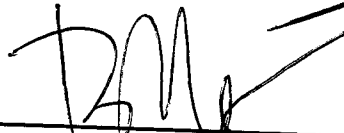
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY D. MARTY, COMMISSIONER