



PUC Process for Approval of a Transmission Line

Hill Country Alliance Landowner Workshop

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Disclaimers

- This presentation is an overview of the Public Utility Commission's rules, procedures, and process for reviewing an application for a transmission line.
- The presentation is a general discussion, not legal advice, and the information and materials provided may not apply to any specific factual or legal set of circumstances.
- No attorney-client relationship is formed by this presentation and no such relationship is implied.
- If you have specific questions about any legal matter consult an attorney.



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What is the process for construction of a transmission line?

- Determine whether the project is needed
- Engineering and planning for project
 - Includes public meetings
 - Environmental assessment and routing study prepared
- Utility files CCN application
 - Notice provided to landowners
- SOAH hearing
- Public Utility Commission approves the project and route
- Post-approval
 - On-the-ground surveys and evaluations
 - Acquisition of rights-of-way
 - Construction



Who participates in and who decides transmission line cases?

■ Participants

- Utility/Transmission Service Provider
- Landowners/Intervenors
- PUC Staff (representing the public interest)

■ Decision makers

- State Office of Administrative Hearings (SOAH)
 - Neutral and independent ALJ(s) will hear the case and issue a PFD
- Public Utility Commission
 - Three members appointed by the Governor
 - Chairman Donna L. Nelson
 - Commissioner Kenneth W. Anderson, Jr.
 - Commissioner Brandy Marty



Comment vs. intervention

- Comments (protests) are not on the record
 - The PUC may not base its decision on comments
 - PUC Staff or the ALJ may look at comments
 - Protestors do not receive notice of the hearing
 - Protestors may not participate in the hearing
- Intervenors have more rights
 - They may participate in the hearing
 - Submit evidence and cross-examine witnesses
 - Intervenors have obligations
 - Follow the rules, including providing service copies
 - Respond to discovery
 - File testimony or a statement of position or be dismissed
 - Appear at the hearing



Comment form

Comments in Docket No. _____

If you want to be a PROTESTOR only, please complete this form. Although public comments are not treated as evidence, they help inform the PUC and its staff of the public concerns and identify issues to be explored. The PUC welcomes such participation in its proceedings.

Mail this completed form and 10 copies to:

Public Utility Commission of Texas
Central Records
Attn: Filing Clerk
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

First Name: _____ Last Name: _____

Phone Number: _____ Fax Number: _____

Address, City, State: _____

I am NOT requesting to intervene in this proceeding. As a PROTESTOR, I understand the following:

- I am NOT a party to this case;
- My comments are not considered evidence in this case; and
- I have no further obligation to participate in the proceeding.

Please check one of the following:

- ☐ I own property with a habitable structure located near one or more of the utility's proposed routes for a transmission line.
- ☐ One or more of the utility's proposed routes would cross my property.
- ☐ Other. Please describe and provide comments. You may attach a separate page, if necessary. _____

Signature of person submitting comments:

Date: _____

Effective: January 1, 2003



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Intervention form

Request to Intervene in PUC Docket No. _____

The following information must be submitted by the person requesting to intervene in this proceeding. This completed form will be provided to all parties in this docket. If you DO NOT want to be an intervenor, but still want to file comments, please complete the "Comments" page.

Mail this completed form and 10 copies to:

Public Utility Commission of Texas
Central Records
Attn: Filing Clerk
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

First Name: _____ Last Name: _____

Phone Number: _____ Fax Number: _____

Address, City, State: _____

I am requesting to intervene in this proceeding. As an INTERVENOR, I understand the following:

- I am a party to the case;
- I am required to respond to all discovery requests from other parties in the case;
- If I file testimony, I may be cross-examined in the hearing;
- If I file any documents in the case, I will have to provide a copy of that document to every other party in the case; and
- I acknowledge that I am bound by the Procedural Rules of the Public Utility Commission of Texas (PUC) and the State Office of Administrative Hearings (SOAH).

Please check one of the following:

- ☐ I own property with a habitable structure located near one or more of the utility's proposed routes for a transmission line.
- ☐ One or more of the utility's proposed routes would cross my property.
- ☐ Other. Please describe and provide comments. You may attach a separate page, if necessary. _____

Signature of person requesting intervention: _____

Date: _____

Effective: January 1, 2003



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Intervention standards

- Must be a directly-affected landowner
 - Transmission line crosses property
 - House within 300 or 500 feet of transmission line
 - Affected landowners receive a notice letter from the utility
- Other standards
 - Can include nearby property
 - Interest must be different than general public
- A landowner who receives notice may intervene



Important dates for landowners

- Intervention deadline
 - 45 days after the application is filed
- Prehearing/Technical Conference
 - Shortly after the intervention deadline
- Prefiled direct testimony
 - Four to six months after the application is filed
- Prefiled rebuttal testimony
 - Rebutting other intervenors' testimony
- Hearing on the merits
 - Six to nine months after application is filed



Other important dates

- Discovery due throughout the proceeding
 - 20-day deadline for response
- Staff testimony
 - Two to four weeks after intervenor direct testimony is filed
- Utility rebuttal testimony
 - One to four weeks after Staff's testimony is filed
- Briefs
 - 2 to 3 weeks after hearing
- SOAH ALJ's Proposal for Decision (PFD)
 - Six to eight weeks after hearing
- PUC Open Meeting and final order
 - Six to eight weeks after PFD issued
(less than one year after application filed)



How is the route selected?

- The criteria and factors the PUC is required to consider are identified in statute
 - PURA § 37.056(c)
- The Commission's rules identify factors that the utility is to consider in the selection of routes
 - P.U.C. SUBST. R. 25.101(b)(3)(B)



PURA § 37.056(c)

- The commission shall grant each certificate on a nondiscriminatory basis after considering:
 - 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;
- (Continued on next slide)



PURA § 37.056(c)

- The commission shall grant each certificate on a nondiscriminatory basis after considering:
 - Other factors, such as:
 - Community values;
 - Recreational and park areas;
 - Historical and aesthetic values;
 - Environmental integrity;
 - The probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
 - To the extent applicable, the effect of granting the certificate on the ability of this state to meet the renewable energy goals.



P.U.C. SUBST. R. 25.101(b)(3)(B)

- Routing:

- An application for a new transmission line shall address the criteria in PURA § 37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.

(Continued on next slide)



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P.U.C. SUBST. R. 25.101(b)(3)(B)

- The following factors shall be considered in the selection of the utility's alternate routes . . . :
 - Whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
 - Whether the routes parallel existing compatible rights-of-way;
 - Whether the routes parallel property lines or other natural or cultural features; and
 - Whether the routes conform with the policy of prudent avoidance.



What information does the PUC consider to make its decision?

- The utility's application and direct testimony
- Prefiled direct testimony by intervenors and Staff
- Rebuttal testimony of the utility and intervenors
- Comments filed by Texas Parks and Wildlife Department (TPWD)
- The hearing on the merits of the application
 - After the hearing, parties file briefs addressing the evidence and legal issues



Application and EA

- Utility/Transmission Service Provider completes the Commission's CCN application for transmission lines
 - Includes basic information about the project
 - Incorporates the Environmental Assessment (EA)
 - Textual description of the project and criteria
 - Many tables with potentially useful data
 - Data on 32 to 38 factors
 - Maps of the proposed routes



EA data table example

	ROUTE 1	ROUTE 2	ROUTE 3	ROUTE 4	ROUTE 5	ROUTE 6	ROUTE 7	ROUTE 8	ROUTE 9	ROUTE 10
1. Length of alternative route	497,535	495,680	494,295	485,698	486,842	522,681	523,825	517,330	518,474	573,721
2. Length of route parallel and adjacent to existing transmission lines	358,889	354,226	322,781	329,915	325,255	241,203	236,543	241,203	236,543	226,672
3. Length of route parallel and adjacent to existing public roads/highways	10,718	10,718	19,437	901	901	0	0	0	0	6,435
4. Length of route parallel and adjacent to existing pipelines	0	0	0	0	0	26,838	26,838	26,838	26,838	0
5. Length of route parallel and adjacent to railroads	0	0	0	0	0	0	0	0	0	0
6. Length of route parallel to apparent property boundaries	0	8,069	2,412	0	8,069	0	8,069	0	8,069	2,696
7. Total length of route parallel to existing corridors (including apparent property boundaries)	369,604	373,013	344,630	330,816	334,225	268,041	271,450	268,041	271,450	235,803
8. Number of habitable structures ¹ within 310 ft of the route centerline	1	1	1	1	1	0	0	0	0	0
9. Length of route across parks/recreational areas ²	0	0	0	0	0	0	0	0	0	0
10. Number of additional parks or recreational areas within 1,000 ft of the route centerline	0	0	0	0	0	0	0	0	0	0
11. Length of route through commercial/industrial areas	0	0	0	0	0	0	0	0	0	0
12. Length of route across agricultural pastureland	0	0	0	0	0	0	0	0	0	0
13. Length of route across agricultural cropland and orchards	0	0	0	0	0	0	0	0	0	0
14. Length of route across agricultural land with mobile irrigation systems	0	0	0	0	0	0	0	0	0	0
15. Length of route across upland forest	0	0	0	0	0	0	0	0	0	0
16. Length of route across riparian woodland, including forested wetlands ³	0	0	0	0	0	0	0	0	0	0
17. Length of route across emergent wetlands ³	0	0	0	0	0	0	0	0	0	0
18. Length of route across scrub/shrub wetlands ³	123	123	123	123	123	123	123	123	123	123
19. Number of streams crossed by the route	38	38	40	39	39	48	48	48	48	67
20. Length of route parallel to rivers, creeks, and streams (within 100 ft)	10,797	10,775	11,214	10,997	10,975	14,395	14,374	14,374	14,353	19,920
21. Number of known rare/unique plant locations within the ROW ⁴	1	1	1	1	1	1	1	1	1	0
22. Length of route through potential endangered or threatened species habitat ⁵	131	131	131	131	131	131	131	131	131	131
23. Number of recorded cultural resource sites crossed by the route ⁶	0	0	0	0	0	1	1	1	1	2
24. Number of additional recorded cultural resource sites within 1,000 ft of the route centerline ⁶	9	9	9	9	9	9	9	9	9	9
25. Length of route across areas of high prehistoric and historic archaeological site potential	101,037	101,037	102,755	102,773	102,773	134,563	134,563	134,698	134,698	191,733
26. Number of airstrips with runways greater than 3,200 ft within 20,000 ft of the route centerline	2	2	2	2	2	1	1	1	1	1
27. Number of airstrips with runways equal to or less than 3,200 ft within 10,000 ft of the route centerline	0	0	0	0	0	0	0	0	0	0
28. Number of heliports within 5,000 ft of the route centerline	0	0	0	0	0	0	0	0	0	0
29. Length of route across open water (lakes, ponds) ⁷	477	477	477	85	85	85	85	85	85	461
30. Number of commercial AM radio transmitters within 10,000 ft of route centerline	0	0	0	0	0	0	0	0	0	0
31. Number of FM radio transmitters, microwave relay stations, and other electronic installations within 2,000 ft	35	36	35	35	36	19	20	19	20	18
32. Number of U.S. or State Highways crossed by the route	3	3	3	3	3	3	3	3	3	3
33. Number of FM roads, county roads, or other street crossed by the route	102	103	113	96	97	114	115	114	115	121
34. Length of route within foreground visual zone of park/recreational areas (1/2 mile unobstructed)	0	1,450	0	0	1,450	0	1,450	3,542	4,992	0
35. Length of route within foreground visual zone of State and U.S. Highways (1/2 mile unobstructed)	78,597	79,163	78,546	62,352	62,917	64,519	65,084	77,317	77,882	49,943

¹ Habitable structures include but are not limited to single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.

² Defined as parks and recreational areas owned by a governmental body or an organized group, club, or church.

³ Riparian woodlands, including forested wetlands were determined based on areas mapped as Palustrine Forested by NWI; scrub/shrub wetlands were determined based on areas mapped as Palustrine Scrub/Shrub by NWI; and emergent wetlands were determined based on areas mapped as Palustrine Emergent by NWI. The jurisdictional status of these wetland systems (in reference to Section 404 of the Clean Water Act) is not known as the project area was not delineated in accordance with USACE's 1987 Wetland Delineation Manual.

⁴ Numbers of known rare/unique plant locations within the ROW were calculated based on the locations of NDD EO data for rare plants within the study area.

⁵ Length of route through potential endangered or threatened species habitat was determined for the Pecos/puzzle sunflower, northern aplomado falcon, southwest willow flycatcher, Comanche Springs pupfish, and Pecos gambusia. Pecos/puzzle sunflower habitat was determined based on the NDD EO data; northern aplomado falcon habitat was delineated based on grasslands (Category 71) from NLCD and counties where the species has the potential to occur based on USFWS and TPWD maps; southwest willow flycatcher habitat was delineated based on the distribution of NWI Palustrine Shrub/Scrub and Forested Wetlands within the study area and counties where the species has the potential to occur based on USFWS and TPWD maps; Comanche Springs pupfish habitat was delineated based on NDD EO data and the extent of Toyah Creek and adjacent waters (the only water bodies in the study area where this species is known to occur) and counties where the species has the potential to occur based on USFWS and TPWD maps; and Pecos gambusia habitat was delineated based on the extents of the Pecos River, Toyah Creek to the confluence with the Pecos River and adjacent waters, and Salt Creek, all of which are locations where this species may occur, or provide connections to known populations and counties where the species has the potential to occur based on USFWS and TPWD maps.

⁶ Recorded cultural resources sites are defined as those sites recognized and recorded by the THC.

⁷ Open water was determined based on areas mapped as open water by the NHD.

Note: All length measurements in feet. All linear measurements, with the exception of areas of high archaeological/historical probability, were obtained from aerial photography flown in February-March 2013 which was ortho-rectified to National Map Accuracy Standards of +/- 10 feet.



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Direct prefiled testimony

- Utility
 - Basic testimony supporting the application
- Landowners/Intervenors
 - Describe their property and impact of the line
 - Identify concerns about proposed routes
 - Propose alternatives
 - Support other routes
- Staff
 - Discusses the statutory and regulatory requirements
 - Recommends a route



TPWD comments

- TPWD submits comments on environmental issues
- TPWD reviews the Environmental Assessment
 - Focuses on impact to wildlife and resources
 - Does not review other factors
- Makes recommendations
 - Best route considering environmental impact
 - Accommodations to wildlife and environment
- PUC must respond to TPWD's recommendations
 - Texas Parks & Wildlife Code § 12.0011



Where are the hearings held?

- Hearings are open to the public and usually are at the offices of the State Office of Administrative Hearings
- If there are many intervenors, options include
 - Austin hotels with meeting space
 - Austin Convention Center
 - Conference Center at the University of Texas



What happens at the hearing?

- Admission of prefiled testimony
 - Including rebuttal testimony
- Admission of other exhibits
 - Discovery responses
 - Deposition excerpts
- Cross-examination of witnesses
 - Witnesses are under oath
- Transcript is prepared by a court reporter



Are some criteria more important than others?

- The Commission considers and weighs all factors, however, two factors often are important to the PUC
 - Cost
 - Impact on landowners
 - Includes number of habitable structures or prudent avoidance
 - Other factors that can be important
 - Parallel existing compatible rights-of-way
 - Existing transmission lines, roads, other utilities
 - Parallel property lines or other natural or cultural features
- (Continued on next slide)



Are some criteria more important than others?

- The Commission also considers:
 - Community values
 - A shared appreciation of an area or other natural or human resource by a national, regional, or local community
 - This assessment of values and resources to the local community can include:
 - Information obtained at public meetings
 - Comments received from community leaders and the public
 - Recreational and park areas
 - Historical and aesthetic values
 - Subjective perception of natural beauty in a landscape
 - Environmental integrity



How are costs estimated?

- The utility provides cost estimates that include:
 - Right-of-way and land acquisition
 - Engineering and design
 - Equipment and materials
 - Construction of facilities



What is a habitable structure?

- P.U.C. SUBST. R. 25.101(a)(3) definition:
 - Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.
 - Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.



What is prudent avoidance?

- P.U.C. SUBST. R. 25.101(a)(4) definition:
 - The limiting of exposure to electric and magnetic fields that can be avoided with reasonable investments of money and effort



What other factors do landowners raise?

- Environmental
- Historic/archaeological
- Disproportionate impact on landowner
 - Bisect, unable to use property, danger, 2-3 sides
- Reliability of the grid
- Unexploded munitions
- Air strip
- Planned development
- Challenges to utility's data



Can landowners represent themselves?

- Yes, but it can require almost a full-time commitment
 - Have to file testimony, pleadings, discovery responses
- Some intervenors are intimidated by the process
 - Can take a great deal of time to learn the rules
 - Can say something that can be used against you
- There is a blizzard of documents
 - Intervenors receive everything filed in the docket
 - Must mail or email everything they file in the docket



May landowners join together?

- Yes, this is common
 - Most often they are on the same segment or line
 - Align because of similar positions
- Can have conflicts
 - Larger landowners often are not completely aligned
 - One or more landowners may support an alternate route that affects others in the group
- The Administrative Law Judge may align landowners at the hearing
 - One person assigned to cross-examine witnesses



Example of potential conflicts



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How are experts used?

- Experts submit substantive testimony about technical aspects of the transmission line
 - Aeronautical consultants
 - Archaeologists
 - Appraisers to challenge cost data for easements
 - Electrical engineers
 - Environmental or natural resource witnesses
 - Real estate consultants
 - Routing or siting consultants



Attorney representation

- Landowners may want to have an attorney represent them in a PUC proceeding
 - Deciding whether to hire an attorney, and choosing the right representation, is an important decision
- An attorney can help the landowner understand the PUC's procedures and the laws and rules that the PUC applies in deciding whether to approve a proposed transmission line
- An attorney is responsible for presentation of the landowner's case
 - Landowner provides input and information to the attorney



Landowner resources

- PUC's landowner brochure
 - [HTTP://TINYURL.COM/PUC-LETTER](http://tinyurl.com/PUC-LETTER)
- LCRA's project web page:
 - [HTTP://TINYURL.COM/LCRA-BLUMENTHAL](http://tinyurl.com/LCRA-BLUMENTHAL)
- This presentation is available at:
 - [HTTP://TINYURL.COM/BAYLIFF-BLUMENTHAL](http://tinyurl.com/BAYLIFF-BLUMENTHAL)
- The PUC's online filing system provides free access to documents filed in its dockets at:
 - [HTTP://INTERCHANGE.PUC.TEXAS.GOV](http://interchange.puc.texas.gov)
- The statute and PUC rule in this presentation
- The utility's application and EA
- Previous cases



Conclusion and “take homes”

- There is a process for fair and impartial review
 - Although some factors tend to have more influence on the Commission than others, there is no silver bullet stopper
- It is likely that the Commission will approve the project
- Intervention
 - Is the only way to have a voice in the decision on where the transmission line is routed
 - Is the best way to protect your rights
- Your neighbors, family, and friends also are concerned
 - Your children still will go to school together and you will see each other at church or other community events





Questions?

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