“PUT IT OVER THERE”: The Transmission Line Siting Process for Cities and their MOUs

William “Cody” Faulk, III
A little about me…

- Associate at Lloyd Gosselink Rochelle and Townsend P.C. in Austin, Texas.
- Represent municipally owned utilities (MOUs), cities, and investor owned water utilities in proceedings at the Public Utility Commission.
- Represent landowners, cities, and MOUs in transmission line CCN proceedings.
- Fun Fact: Has only ever been a TPPA Member City customer.
Questions for today…

- Why should cities and MOUs care about transmission line routing proceedings?
- Who has to follow this process?
- When do MOUs need to follow this process?
- What does the application process look like?
- How does the contested case hearing process operate?
- What are some examples of recent transmission line proceedings?
Cities participating in transmission line proceedings

Concerns of cities in transmission line proceedings:

- Protection of “community values.”
- Aesthetics
- Sites of historical or cultural significance
- Protection of areas of planned city growth.
- Protection of existing electric and other city-owned infrastructure.
Community Values

- The term “community values” is not defined in statute or in PUC rules, but the Commission has recognized a working definition of “community values” as “a shared appreciation of an area or other mutual resources by a national, regional, or local community.”

- Actions of elected city officials inherently constitute expressions of community values. i.e. public meetings, open houses, and workshops held by a City usually result in a Comprehensive Plan that addresses community values.

- Laundry list of community values: traffic, water, wastewater, housing, economic development, public health and safety.

- A Comprehensive Plan should be one of the most reliable sources of evidence of community values.
Protecting existing electric and other city-owned infrastructure

- MOUs and their cities have existing and planned infrastructure throughout their city limits and ETJ.
- It is in cities’ interests to work with transmission utilities prior to the filing of applications to make them aware of critical infrastructure and electric facilities.
- Participating in CCN proceedings provides a voice for cities to make the PUC aware of how these lines may impact their existing facilities.
Protecting Comprehensive Plans and Growth

- Cities pass “Comprehensive Plans” that include future land use and transportation plans.
- They are legislative enactments that guide future decision making relative to growth and development within the city limits and extraterritorial jurisdiction.
- Drawn off of community input.
- When CCN applications are filed that may impact a city, leaders should examine how the proposed routes comport with the city’s comprehensive plan and projected growth.
Cities participating in transmission line proceedings

Movement towards collaboration between cities and transmission utilities regarding siting.

Best practices for cities when being notified of a transmission line proceeding:

- Consult with your experts (i.e. Utility General Manager, Attorneys, and Consulting Engineers).
- Contact the applying utility to discuss how they see the project impacting the city.
- Examine whether the routes will impact any planned growth, existing infrastructure, or expressed community values.
- Intervene, even if the city does not anticipate participating in the proceeding, to ensure a “seat at the table.”
Who has to follow this process?

- Transmission utilities, MOUs, and Electric Cooperatives, with certain exceptions.
- Pursuant to PURA § 37.051 and 16 TAC § 25.101, the Commission is required to issue a CCN for new electric transmission lines.
- A certificate is required for: (1) change in service area; (2) generation facility; (3) electric transmission line; and (4) tie lines.
Exceptions to the need for a CCN

- Exceptions are set out in PURA § 37.052 and 16 TAC § 25.101(c).
  - New electric high voltage switching station, or substation.
  - Repair or reconstruction of a transmission facility due to emergencies.
  - Construction or upgrading of distribution facilities within the electric utility’s service area.
  - Routine activities associated with transmission facilities that are conducted by transmission service providers.
    - Modification or extension of an existing transmission line solely to provide service to a substation or metering point, so long as it does not exceed one mile, and all landowners whose property is crossed by the transmission facilities have given prior written consent.
    - Upgrades so long as they are not greater than 230 kV.
    - The relocation of all or part of an existing transmission facility due to a request for relocation, as long as it is done at the expense of the requesting party and is solely on a right-of-way provided by the requesting party.
Government Requirement
Necessitating Relocation Exception

- Under 16 TAC § 25.101(c)(5)(F) a transmission utility is excused from obtaining a CCN if it is for, “the relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality.

- All landowners of property crossed by the electric facilities must have given prior written consent.

- The relocation, alteration, or reconstruction is responsive to the governmental request.
When do MOUs need to follow this process?

- PURA § 37.051(g)
  - MOUs and municipal power agencies must obtain a CCN when constructing, installing, or extending a transmission facility outside of the municipal boundaries of the municipality that owns the MOU, or the power agency's boundaries.
  - This requirement does not apply to the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.
Notice to PUC of MOU transmission lines

- 16 TAC § 25.101(b)(3):
- All new electric transmission lines shall be reported to the PUC. This reporting requirement is also applicable to new electric transmission lines to be constructed by a MOU.
What the CCN application process looks like:

- Routing Study and Environmental Assessment
- Notice
- Application
- Contested Case
Routing Study & Environmental Assessment

- Typically prepared by outside engineers.
- Delineates the Study Area.
- Collects and reviews environmental, historical, and archeological data of the Study Area.
- Identifies engineering constraints within the Study Area.
- Establishes preliminary routes and segments.
- Identifies cost estimates of the routes and individual segments.
- Public information meetings are held to determine “community values,” usually through surveys and town halls.
- Evaluates the “best meets” route, which best meets the PUC’s routing criteria.
## Estimated Costs Chart

<table>
<thead>
<tr>
<th>Route</th>
<th>Estimated Cost AEP TNC</th>
<th>Estimated Cost ETT</th>
<th>Estimated Cost Total</th>
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# Routing Criteria Chart

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<td>Length of primary alternative route (miles)</td>
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<td>Number of habitable structures within 300 feet of ROW centerline</td>
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<tr>
<td>Number of newly affected habitable structures within 300 feet of ROW centerline</td>
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<td>Length of ROW using existing transmission line ROW</td>
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<td>Length of ROW parallel and adjacent to existing transmission line ROW</td>
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<tr>
<td>Length of ROW parallel and adjacent to other existing ROW (roadways, railways, etc.)</td>
<td>7.6</td>
<td>2.6</td>
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<td>Length of ROW parallel and adjacent to apparent property lines</td>
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<td>Length of ROW across parks/recreational areas &lt; 500 feet from ROW centerline</td>
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<td>0.00</td>
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<tr>
<td>Number of additional parks/recreational areas within 1,000 feet of ROW centerline</td>
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<td>1</td>
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<td>Length of ROW through cropland</td>
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<td>Length of ROW through pasture/rangeland</td>
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<td>Length of ROW through land irrigated by traveling systems (rolling or pivot type)</td>
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<td>Length of ROW parallel to existing pipeline ROW &lt; 500 feet from ROW centerline</td>
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<td>Number of pipeline crossings</td>
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<tr>
<td>Number of transmission line crossings</td>
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<tr>
<td>Number of U.S. and State highway crossings</td>
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<td>4</td>
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<td>Number of farm-to-market (FM) crossings</td>
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<td>Number of cemeteries within 1,000 feet of the ROW centerline</td>
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<td>Number of FAA registered public/military airports with one runway more than 3,200 feet in length located within 20,000 feet of ROW centerline</td>
<td>2</td>
<td>2</td>
<td>2</td>
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<tr>
<td>Number of FAA registered public/military airports having no runway more than 3,200 feet in length located within 10,000 feet of ROW centerline</td>
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<td>0</td>
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<td>Number of private airstrips within 10,000 feet of the ROW centerline</td>
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<tr>
<td>Number of heliports within 5,000 feet of the ROW centerline</td>
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<td>Number of commercial AM radio transmitters within 10,000 feet of the ROW centerline</td>
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<td>1</td>
<td>1</td>
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<tr>
<td>Number of FM radio transmitters, microwave towers, and other electronic installations within 2,000 feet of ROW centerline</td>
<td>3</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Aesthetics</td>
<td></td>
<td></td>
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<tr>
<td>Estimated length of ROW within foreground visual zone of Interstate, U.S. and State highways</td>
<td>7.4</td>
<td>7.9</td>
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<tr>
<td>Estimated length of ROW within foreground visual zone of FM roads</td>
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<td>1.7</td>
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<tr>
<td>Estimated length of ROW within foreground visual zone of parks/recreational areas</td>
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<td>1.7</td>
<td>1.4</td>
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<tr>
<td>Ecology</td>
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<tr>
<td>Length of ROW through upland woodlands/brushlands</td>
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<td>36.0</td>
<td>34.3</td>
</tr>
<tr>
<td>Length of ROW through bottomland/riparian woodlands</td>
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<td>0.2</td>
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<td>Length of ROW across NWI mapped wetlands</td>
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<tr>
<td>Length of ROW across known habitat of federally listed endangered or threatened species</td>
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<tr>
<td>Length of ROW across open water (lakes, ponds)</td>
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<td>Number of stream crossings</td>
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<tr>
<td>Number of river crossings</td>
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<td>Length of ROW parallel (within 100 feet) to streams or rivers</td>
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<td>Length of ROW across 100-year floodplain</td>
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<td>Cultural Resources</td>
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<tr>
<td>Number of recorded archeological sites crossed by ROW</td>
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<tr>
<td>Number of additional archeological sites within 1,000 feet of ROW centerline</td>
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<tr>
<td>Number of National Register of Historic Places listed properties crossed by ROW</td>
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<td>0</td>
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<tr>
<td>Number of additional National Register of Historic Places listed properties within 1,000 feet of ROW centerline</td>
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<td>0</td>
<td>0</td>
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<tr>
<td>Length of ROW through areas of high archaeological/historic site potential</td>
<td>15.9</td>
<td>17.3</td>
<td>19.4</td>
</tr>
</tbody>
</table>
Notice

Pursuant to 16 TAC § 22.52(a) an applicant must give notice of intent to secure a CCN.

- Notice must be given in a newspaper, having general circulation in the county or counties where the certificate is being requested, within 1 week after filing an application.

- Notice must be mailed, on the date an applicant files an application, to the owners of land who would be directly affected by the certificate. 16 TAC § 22.52(a)(3).
  - 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 (i) within 300 feet of the centerline of a transmission project of 230kV or less, or (ii) within 500 feet of the centerline of a transmission project greater than 230kV.

- The notice: identifies the Commission's docket number and style; type of proposed facility; estimated expense; and describes all routes without designating a preferred route. 16 TAC § 22.52(a)(1).
Notice Packet

- **Landowner**/Utilities/County and Municipal Officials/OPUC Letters
  - Maps
  - Route Descriptions
  - PUC Landowner Brochure
  - Protest/Comment Form
  - Intervenor Form
- **Newspaper Publication**
County and Municipal Notice

August 26, 2016

The Honorable {Name}
County Judge
{Address}
{City, State, Zip}

RE: PUC Docket No. 46234; Joint Application of AEP Texas North Company and Electric Transmission Texas, LLC to Amend its Certificates of Convenience and Necessity for the AEP TNC Heartland to ETT Yellowjacket 138-kV Transmission Line in McCulloch and Menard Counties, Texas

Dear Honorable Judge:

AEP Texas North Company (AEP TNC) and Electric Transmission Texas, LLC (ETT) (jointly referred to as the “Companies”) give notice of their intent to amend their Certificates of Convenience and Necessity (CCN) to construct a proposed 138-kV transmission line in portions of McCulloch and Menard Counties, Texas.

The Companies’ routing options for this project range from approximately 34.8 miles to 43.5 miles in length. The estimated cost of the routing options range from approximately $37.1 million to $43.1 million. The Companies plans to construct the transmission line on steel single-pole structures.

The Companies have filed an application with the Public Utility Commission of Texas (PUC) in Docket No. 46234 – Joint Application of AEP Texas North Company and Electric Transmission Texas, LLC to Amend Their Certificates of Convenience and Necessity for the AEP TNC Heartland to ETT Yellowjacket 138-kV Transmission Line in McCulloch and Menard Counties, Texas (Project).

Persons who wish to intervene in the proceeding or comment upon the action sought should mail their requests to intervene or their comments (along with 10 copies) to the following address:

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

The deadline for intervention in the proceeding is October 10, 2016, and a letter requesting intervention should be received by the Public Utility Commission of Texas (PUC or Commission) by that date.
Application

- An application for a CCN is filed with the PUC. The PUC provides applications on its [website](#).
- A CCN service area boundary application includes:
  - Part A: Applicant Information
  - Part B: Effects
  - Part C: Need and Costs
  - Part D: Maps
  - Part E: Affidavit
Filing & Intervention Period

- Application filed with PUC.
- Notice provided to landowners, other utilities, municipalities, counties, and OPUC.
- Intervention period runs for 45 days from the date of filing.
  - Parties can be authorized to intervene post-cutoff at the discretion of the ALJs.
Intervention

- **Intervenor Form**
- **Affected parties intervene?**
  - Contested CCN process begins.
  - Requests for hearing are filed.
- **No affected parties intervene?**
  - Uncontested administrative process begins.
  - 80 day process.
  - PUC Staff reviews and makes a recommendation on the route and application, which can then be administratively approved by an ALJ.
Contested Hearing Process

- **Timeline**
  - ERCOT Critical Project must be completed within 180 days of filing.
  - All other projects must be completed within one year of filing.

- **Post-Application Steps:**
  - Staff Recommendation on Administrative Completeness
  - Commission Issues [Order of Referral](#) to the State Office of Administrative Hearings
    - Deadline for Decision
    - Issues to be Addressed
Issues to be Addressed

- Application adequacy
- Need for the transmission line
- Route that best meets routing criteria
- Routing criteria
- TPWD Recommendation
“Need”

16 TAC § 25.101(b)(3)(A): NEED

- Applicant must present an economic cost-benefit study that includes analysis showing the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part.
- Indirect costs and benefits to the transmission system may be included in the cost-benefit study.
- The commission shall give great weight to such a study if it is conducted by the ERCOT independent system operator.

Routing Criteria

- Community Values
- Recreational And Park Areas
- Historical And Aesthetic Value
- Environmental Integrity
- Impact To Landowners
- Whether The Routes Parallel Or Utilize Existing Compatible Rights-of-way For Electric Facilities
- Whether The Routes Parallel Or Utilize Other Existing Compatible Rights-of-way, Including Roads, Highways, Railroads, Or Telephone Utility Rights-of-way
- Whether The Routes Parallel Property Lines Or Other Natural Or Cultural Features
- Whether The Routes Conform With The Policy Of Prudent Avoidance
All of the routing factors and the Commission’s policy of prudent avoidance related to electric and magnetic fields are considered holistically.

The PUC in Docket No. 30168, noted that it has previously emphasized two factors in deciding the routing of transmission lines: the cost of the line and its impact on habitable structures.

16 TAC § 25.101(b)(3)(B) emphasizes the paralleling of compatible ROW (including property boundaries) in addition to conforming to the PUC’s policy of prudent avoidance of electric and magnetic fields.

The PUC also found in Docket No. 30168 that the ALJs placed too much emphasis on recreational and park areas, historical values, and environmental issues.

In more recent proceedings (e.g., Docket Nos. 37464, 38230 and 38354), the PUC has not selected the route that has the least number of habitable structures affected when another route had significantly better performance regarding paralleling existing compatible ROW (including property boundaries).
Contested Hearing Process

- **Discovery**
  - 16 TAC § 22.144
    - The party upon whom a request is served shall serve a full written response to the request within **20 days** after receipt of the request.
    - The presiding officer, on motion and for good cause shown, may extend or shorten the time for providing responses.

- **Company Pre-filed Testimony**
  - Supporting the Application.
  - Identifying the “best meets” route.

- **Intervenor Pre-filed Testimony**
  - Identifying concerns over the route.
  - Expert witness testimony on the “best meets” route, or other “Issues to be Addressed” including the need for the line.

- **PUC Staff Pre-filed Testimony**

- **Rebuttal Pre-filed Testimony**
  - Responding to any parties’ direct pre-filed testimony.
Contested Hearing Process
Route Adequacy Hearing

- Optional procedure to challenge whether the Applicant has proposed a sufficient number of routes to conduct a hearing on the merits, forcing the Applicant to re-file or amend.
- The focus is on whether the routes taken as a whole present a reasonably differentiated range of options, not whether a particular route is adequate or whether better routes could have been devised.

- Three Phase Process:
  1. Applicant must make a prima facie showing that there are an adequate number of routes in the application.
  2. Other parties must then present evidence showing that the routes presented are inadequate or to present additional information for consideration.
  3. Applicant must then offer a reasoned justification for why certain other potential routing options were not included in the application.
Contested Hearing Process

- Hearing on the Merits
  - Company, Intervenor, and Staff witnesses are presented for cross-examination on their pre-filed testimony.
  - Cross-examination of witnesses is wide open.

- Post-hearing Briefing
  - Closing arguments made in written form, addressing the “Issues to be Determined”

- Issuance of Proposal for Decision (PFD)
  - Recommendation by the ALJ(s) answering the “Issues to be Determined”

- Exceptions
  - Parties file comments and requests for changes to the PFD.
Contested Hearing Process

- **PUC Open Meeting Consideration**
  - Policy of PUC to consider CCN applications at two meetings. One meeting for intervenors to present at the PUC, and another meeting to make a determination.
  - PUC can approve, grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege, or deny the grant of a CCN.

- **Motions for Rehearing & Appeal**
  - Parties have 20 days to file a motion for rehearing after the final order is issues, which is a prerequisite to appeal.
Case Study: Round Rock to Leander

- New 138-kV transmission line from two new substations, connecting the new substations to the electric grid at the existing PEC Leander and Oncor Round Rock substations.
- Over 990 parties were initially granted intervention. Subsequently, approximately 530 were dismissed from the docket prior to the hearing on the merits.
- The cities of Round Rock, Leander, Cedar Park, and Georgetown were all parties to the proceeding.
- The application proposed 31 routes, using 160 route segments.
- The Cities Group, a Landowners Group, and Commission Staff all proposed alternative routes using the segments proposed.
## Case Study: Round Rock to Leander

<table>
<thead>
<tr>
<th></th>
<th>Cities’ Route - 1</th>
<th>Landowners’ Route - 1</th>
<th>Route 31</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Length (miles)</strong></td>
<td>13.8</td>
<td>14.8</td>
<td>13.7</td>
</tr>
<tr>
<td><strong>Estimated total cost (millions)</strong></td>
<td>$69.3</td>
<td>$74.5</td>
<td>$71.2</td>
</tr>
<tr>
<td><strong>Number of habitable structures</strong></td>
<td>452</td>
<td>428</td>
<td>461</td>
</tr>
</tbody>
</table>
Case Study: Round Rock to Leander

Issues the Commission weighed included:
- Community Values
- Length of routes
- Estimated costs
- Prudent avoidance
- Compatible rights of way
- Environmental integrity
- Recreational and park areas
- Historical and aesthetic values
- Landowner and municipality response
Case Study: Round Rock to Leander

- The ALJs’ PFD “place[d] considerable weight on the agreement among the cities.”
  - PFD Finding of Fact No. 46 “The agreement among the cities on one route should be given considerable weight in considering the community values of the area.”
- The Commission deleted the ALJs’ Finding of Fact No. 46, and instead adopted Landowners’ Route No. 1 in its Final Order.
- This case is subject to multiple motions for rehearing.
CPS Energy Transmission Planning

1. Utility Planners/Engineers determine/establish need for project.
2. Study Area delineated based on end points for transmission line and/or electrical load area for substation.
4. Preliminary alternative transmission line routes/substation sites developed, considering:
   - Environmental/land use constraints or avoidance/exclusion areas
   - Routing/siting opportunities
   - Engineering/right-of-way concerns
   - Evaluation of structure types
5. Public Involvement Program.
6. Alternatives refined.
CPS Energy Transmission Planning Cont’d.

7. Additional public meetings.
8. Primary alternative routes/sites evaluated using list of environmental criteria.
9. Preferred route/site recommended.
11. Utility selects overall preferred route based on factors, which is approved by Board and then submitted to City Council for Ordinance approving.
12. Public notified of final route/site selected and date for start of construction.
Case Study: CPS Shepard Substation

- CPS Energy is planning to construct a new electric substation and high-voltage transmission line in the southwest area of San Antonio near Shepherd and Pearsall Roads.
- The substation requires approximately 6 acres; the transmission right of way would be approximately 100 feet wide.
Case Study: CPS Shepard Substation

**Timeline**

- Gather information and land use data  
  *In progress*

- Send letters to landowners  
  *August 11, 2016*

- Hold Open House  
  *August 25, 2016*

- Complete evaluation  
  *Public input, environment, land use, engineering*  
  *Spring 2017*

- Recommend route to the CPS Energy Board of Trustees  
  *Notify landowners and interested parties*  
  *Summer 2017*

- Apply for City Ordinance  
  *Fall 2017*

- Start construction  
  *Summer 2018*

- Complete construction  
  *Early 2020*
Case Study: CPS Shepard Substation

- Environmental Assessment Report was completed by outside engineers, using the same model as a CCN proceeding.
- Open Houses and Questionnaires were conducted, after notifying affected landowners.
- CPS determined a preferred route.
- Awaiting approval from CPS Board of Trustees, and ultimate approval by City Council.
Transmission Line Dockets:

- **Docket No. 45866** - APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE ROUND ROCK - LEANDER 138-KV TRANSMISSION LINE IN WILLIAMSON COUNTY
  - Final Order issued and Motions for Rehearing Filed
- **Docket No. 46234** - JOINT APPLICATION OF AEP TEXAS NORTH COMPANY AND ELECTRIC TRANSMISSION TEXAS, LLC TO AMEND THEIR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR THE AEP TNC HEARTLAND TO ETT YELLOW JACKET 138-KV TRANSMISSION LINE IN MCCULLOCH AND MENARD COUNTIES
  - Proposal for Decision Issued
- **Docket No. 46429** - APPLICATION OF BRAZOS ELECTRIC POWER COOPERATIVE, INC. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR A 138-KV TRANSMISSION LINE IN COLLIN COUNTY
  - Hearing on the Merits Held
- **Docket No. 47379** - APPLICATION OF THE CITY OF GARLAND TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE DENT ROAD TO SHELBY 138-KV TRANSMISSION LINE IN HUNT COUNTY
  - Application Filed
QUESTIONS?