
Landowners and Transmission Line Cases at the PUC

Public Utility Commission of Texas



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Purpose of This Brochure

This brochure is intended to provide landowners with information about proposed new transmission lines and the Public Utility Commission's ("PUC" or "Commission") process for evaluating these proposals. At the end of the brochure is a list of sources for additional information.

The following topics are covered in this brochure:

- How the PUC evaluates whether a new transmission line should be built,
- How you can participate in the PUC's evaluation of a line, and
- How utilities acquire the right to build a transmission line on private property.

You are receiving the enclosed formal notice because one or more of the routes for a proposed transmission line may require an easement or other property interest across your property, or the centerline of the proposed project may come within 300 feet of a house or other habitable structure on your property. This distance is expanded to 500 feet if the proposed line is greater than 230 kilovolts (kV). For this reason, your property is considered **directly affected land**. This brochure is being included as part of the formal notice process.

If you have questions about the proposed routes for a transmission line, you may contact the applicant. The applicant also has a more detailed map of the proposed routes for the transmission line and nearby habitable structures. The applicant may help you understand the routing of the project and the application approval process in a transmission line case but cannot provide legal advice or represent you. ***The applicant cannot predict which route may or may not be approved by the PUC. The PUC decides which route to use for the transmission line, and the applicant is not obligated to keep you informed of the PUC's proceedings. The only way to fully participate in the PUC's decision on where to locate the transmission line is to intervene, which is discussed below.***

The PUC is sensitive to the impact that transmission lines have on private property. At the same time, transmission lines deliver electricity to millions of homes and businesses in Texas, and new lines are sometimes needed so that customers can obtain reliable, economical power.

The PUC's job is to decide whether a transmission line application should be approved and on which route the line should be constructed. The PUC values input from landowners and encourages you to participate in this process by intervening in the docket.

PUC Transmission Line Case

Texas law provides that most utilities must file an application with the PUC to obtain or amend a Certificate of Convenience and Necessity (CCN) in order to build a new transmission line in Texas. The law requires the PUC to consider a number of factors in deciding whether to approve a proposed new transmission line.

The PUC may approve an application to obtain or amend a CCN for a transmission line after considering the following factors:

- Adequacy of existing service;
- Need for additional service;
- The effect of approving the application on the applicant and any utility serving the proximate area;
- Whether the route utilizes existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- Whether the route parallels existing compatible rights-of-way;
- Whether the route parallels property lines or other natural or cultural features;
- Whether the route conforms with the policy of prudent avoidance (which is defined as the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort); and
- Other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area.

If the PUC decides an application should be approved, it will grant to the applicant a CCN or CCN amendment to allow for the construction and operation of the new transmission line.

Application to Obtain or Amend a CCN:

An application to obtain or amend a CCN describes the proposed line and includes a statement from the applicant describing the need for the line and the impact of building it. In addition to the routes proposed by the applicant in its application, the possibility exists that additional routes may be developed, during the course of a CCN case, that could affect property in a different manner than the original routes proposed by the applicant.

The PUC conducts a case to evaluate the impact of the proposed line and to decide which route should be approved. Landowners who would be affected by a new line can:

- informally file a protest, or
- formally participate in the case as an intervenor.

Filing a Protest (informal comments):

If you do not wish to intervene and participate in a hearing in a CCN case, you may file **comments**. An individual or business or a group who files only comments for or against any aspect of the transmission line application is considered a “protestor.”

Protestors make a written or verbal statement in support of or in opposition to the utility’s application and give information to the PUC staff that they believe supports their position.

Protestors are **not** parties to the case, however, and ***do not have the right to:***

- Obtain facts about the case from other parties;
- Receive notice of a hearing, or copies of testimony and other documents that are filed in the case;
- Receive notice of the time and place for negotiations;
- File testimony and/or cross-examine witnesses;
- Submit evidence at the hearing; or
- Appeal P.U.C. decisions to the courts.

If you want to make comments, you may either send written comments stating your position, or you may make a statement on the first day of the hearing. If you have not intervened, however, you will not be able to participate as a party in the hearing. Only parties may submit evidence and ***the PUC must base its decision on the evidence.***

Intervening in a Case:

To become an intervenor, you must file a statement with the PUC, no later than the date specified in the notice letter sent to you with this brochure, requesting intervenor status (also referred to as a party). This statement should describe how the proposed transmission line would affect your property. Typically, intervention is granted only to directly affected landowners. However, any landowner may request to intervene and obtain a ruling on his or her specific fact situation and concerns. A sample form for intervention and the filing address are attached to this brochure, and may be used to make your filing. A letter requesting intervention may also be used in lieu of the sample form for intervention.

If you decide to intervene and become a party in a case, you will be required to follow certain procedural rules:

- You are required to timely respond to requests for information from other parties who seek information.
- If you file testimony, you must appear at a hearing to be cross-examined.
- If you file testimony or any letters or other documents in the case, you must send copies of the documents to every party in the case and you must file multiple copies with the PUC.
- If you intend to participate at the hearing and you do not file testimony, you must at least file a statement of position, which is a document that describes your position in the case.
- Failure to comply with these procedural rules may serve as grounds for you to be dismissed as an intervenor in the case.
- If you wish to participate in the proceedings it is very important to attend any prehearing conferences.

Intervenors may represent themselves or have an attorney to represent them in a CCN case. If you intervene in a case, you may want an attorney to help you understand the PUC’s procedures and the laws and rules that the PUC applies in deciding whether to approve a transmission line. The PUC encourages landowners to intervene and become parties.

Stages of a CCN Case:

If there are persons who intervene in the case and oppose the approval of the line, the PUC may refer the case to an administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) to conduct a hearing, or the Commission may elect to conduct a hearing itself. The hearing is a formal proceeding, much like a trial, in which testimony is presented. In the event the case is referred to SOAH, the ALJ makes a recommendation to the PUC on whether the application should be approved and where and how the line should be routed.

There are several stages of a CCN case:

- The ALJ holds a prehearing conference (usually in Austin) to set a schedule for the case.
- Parties to the case have the opportunity to conduct discovery; that is, obtain facts about the case from other parties.
- A hearing is held (usually in Austin), and parties have an opportunity to cross-examine the witnesses.
- Parties file written testimony before the date of the hearing. Parties that do not file written testimony or statements of position by the deadline established by the ALJ may not be allowed to participate in the hearing on the merits.
- Parties may file written briefs concerning the evidence presented at the hearing, but are not required to do so.
- In deciding where to locate the transmission line and other issues presented by the application, the ALJ and Commission rely on factual information submitted as evidence at the hearing by the parties in the case. In order to submit factual information as evidence (other than through cross-examination of other parties' witnesses), a party must have intervened in the docket and filed written testimony on or before the deadline set by the ALJ.
- The ALJ makes a recommendation, called a **proposal for decision**, to the Commission regarding the case. Parties who disagree with the ALJ's recommendation may file exceptions.
- The Commissioners discuss the case and decide whether to approve the application. The Commission may approve the ALJ's recommendation, approve it with specified changes, send the case back to the ALJ for further consideration, or deny the application. The written decision rendered by the Commission is called a **final order**. Parties who believe that the Commission's decision is in error may file motions for rehearing, asking the Commission to reconsider the decision.
- After the Commission rule on the motion for rehearing, parties have the right to appeal the decision to district court in Travis County.
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Right to Use Private Property

The Commission is responsible for deciding whether to approve a CCN application for a proposed transmission line. If a transmission line route is approved that impacts your property, the electric utility must obtain the right from you to enter your property and to build, operate, and maintain the transmission line. This right is typically called an easement.

Utilities may buy easements through a negotiated agreement, but they also have the power of eminent domain (condemnation) under Texas law. Local courts, not the PUC, decide issues concerning easements for rights-of-way. The PUC does not determine the value of property.

The PUC final order in a transmission case normally requires a utility to take certain steps to minimize the impact of the new transmission line on landowners' property and on the environment. For example, the order normally requires steps to minimize the possibility of erosion during construction and maintenance activities.

HOW TO OBTAIN MORE INFORMATION

The PUC's online filings interchange on the PUC website provides free access to documents that are filed with the Commission in Central Records. The docket number, also called a control number on the PUC website, of a case is a key piece of information used in locating documents in the case. You may access the Interchange by visiting the PUC's website home page at www.puc.state.tx.us and navigate the website as follows:

- Select "Interchange Retrieval."
- Select "Retrieve Filings."
- Select "Filings Search"
- Enter 5-digit Control (Docket) Number. *No other information is necessary.*
- Select "Search." *All of the filings in the docket will appear in order of date filed.*
- Scroll down to select desired filing.
- Click on a blue "Item" number at left.
- Click on a "Download" icon at left.

Documents may also be purchased from and filed in Central Records. For more information on how to purchase or file documents, call Central Records at the PUC at 512-936-7180.

PUC Substantive Rule 25.101, Certification Criteria, addresses transmission line CCNs and is available on the PUC's website, or you may obtain copies of PUC rules from Central Records.

Always include the docket number on all filings with the PUC. You can find the docket number on the enclosed formal notice. Send documents to the PUC at the following address.

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

The information contained within this brochure is not intended to provide a comprehensive guide to landowner rights and responsibilities in transmission line cases at the PUC. This brochure should neither be regarded as legal advice nor should it be a substitute for the PUC's rules. However, if you have questions about the process in transmission line cases, you may call the PUC's Legal Division at 512-936-7261. The PUC's Legal Division may help you understand the process in a transmission line case but cannot provide legal advice or represent you in a case. You may choose to hire an attorney to decide whether to intervene in a transmission line case, and an attorney may represent you if you choose to intervene.

Communicating with Decision-Makers

Do not contact the ALJ or the Commissioners by telephone or email. They are not allowed to discuss pending cases with you. They may make their recommendations and decisions only by relying on the evidence, written pleadings, and arguments that are presented in the case.