

# CREZ Transmission: A Towering Issue

## Landowners Recount Daunting Experience of Transmission Line Routing Process

article by **Lorie Woodward Cantu**



Photo by D.K. Langford

Landowners across the state are facing off against utility companies and regulators. The issue: the routing of more than 2,300 miles of high-voltage transmission lines being built as part of the Competitive Renewable Energy Zones (CREZ).

Although the Legislature mandated that the lines be built, utility companies must first apply for a Certificate of Convenience and Necessity (CCN) with the Public Utility Commission (PUC). As part of that process, the utility must announce the potential routes of the lines.

Landowners can participate by protesting or intervening with the PUC. A protest is an informal action that allows landowners to file written or verbal comments, but protestors are not parties to the case. In other words, their comments are not utilized as evidence by Administrative Law Judges in the PUC hearings. Intervenor, on the other hand, are parties to the case, allowing them to hire

expert witnesses; get facts from other parties; file written and/or verbal testimony; cross-examine witnesses; and file brief closing arguments.

### **Dove Creek Ranch**

*"Everyone has to decide for themselves whether or not it's worth it to intervene,"* TWA Director Dan Flournoy, whose family intervened when a transmission line was proposed to cross their Dove Creek Ranch, said. "It depends on your personal circumstances, including the size of your property, your financial situation and how you feel about the prospect of living with a transmission line. It's not an easy process, and people should go into it with their eyes wide open."

Flournoy speaks from experience. Dan, his wife Ruth, and their family partners did not want Dove Creek Ranch to bear the imprint of industrialization, so they refused to allow wind turbines to be built on the ranch, which is near San Angelo.

Ironically, because the family had no wind turbines, the ranch was identified as a potential route for one of the industrial-strength 345 kV transmission lines being built to carry wind energy from the production fields of West Texas to urban areas along the I-35 corridor.

In April 2009, the family received notice that the LCRA transmission lines might cross their property and that there would be meetings in San Angelo on May 4 and in Christoval on May 5. Dan and his brother-in-law attended the San Angelo meeting and asked for specific locations and coordinates of the proposed lines. The consultants were not able to give them answers.

Furthermore, the consultants were unaware of the existence of the significant headwaters of Dove Creek Springs located on the property. The city of San Angelo and the Upper Colorado River Authority (UCRA) attested these springs contribute 18 percent of San Angelo's water supply. One of the routes cut across the ranch and ran alarmingly close to the spring and the creek. Hydrologic experts feared that construction in the fragile karst limestone could disrupt spring flow. The consultants were also unaware that the ranch was the site of the Battle of Dove Creek in 1865, which is considered one of the most significant Indian battles in Texas. The battleground is marked by a monument that was close to one of the proposed lines.

Realizing that LCRA did not have critical data about the ranch, the family gathered as much information as possible between the San Angelo and Christoval meetings, and submitted it to the utility representatives at the Christoval meeting. After that second meeting, it was apparent even



more data needed to be presented.

In July, the family sent a booklet to LCRA that contained a seven-page letter from Dr. Karen Clary of the Texas Parks and Wildlife Department, a five-page letter from the Texas Historical Commission, letters from the City of San Angelo and the Upper Colorado River Authority (UCRA), along with an independent hydrological analysis of the water on the ranch. All of these reports strongly suggested that LCRA should not come onto the property. At this point, the family felt good about their chances to avoid the lines, but the ordeal was far from over, Flournoy said.

*"The thing that struck me about the process was that utility representatives didn't seem to care about the land or the environment or the people,"* Flournoy said. *"It was particularly disturbing that they seemed to dismiss the importance of the reports given to them by the expert scientists from the Texas Parks and Wildlife Department. They didn't seem to care about anything except building the transmission line. It looked like everything they did was a means to an end."*

The law allows the utility companies to be cavalier, not only because they are granted powers of eminent domain, but because the Legislature built in the ultimate fall back position for CREZ cases: after the 181st day from the filing date of the CCN, if the [Public Utility] Commission cannot reach a final decision, the utility company may proceed to construct its preferred route without further due process.

On January 15, 2010, LCRA announced, much to the dismay of the family, that its preferred route would go along 3.5 miles of the family property line, near the neighbors' wind turbine fields. At this point, it looked like the industrialization caused by siting the wind turbines so close to the fence line would increase with the construction of a massive transmission line.

Fortunately for the family, a very large ranch north of the Dove Creek

Ranch had the misfortune of having all three proposed North/South LCRA routes going through it, so its owners decided to negotiate with LCRA and PUC. The ranch agreed to the most eastern route with modifications, which then altered the preferred route. Eventually, all interveners agreed on a route that took the line several miles east of the family ranch.

Dealing with the LCRA, the family learned that nothing is private. Any documents pertinent to the intervention are filed on the PUC website as part of the case docket. Intervenors must respond to the utility, to the PUC and to other interveners. All of those files are accessible to the public.

*"This process pits neighbor against neighbor,"* Flournoy said. *"It causes people to scramble for the upper hand and try to leverage every piece of information that they perceive to be advantageous."* Flournoy said that he read the extensive docket every day and in addition to learning about case facts, he learned about adjoining families' personal issues and other information that people usually keep to themselves. *"Our family, who is very private, was also 'undressed' in front of our neighbors,"* he said.

*"In this process, there are no winners,"* Flournoy said. *"Our family went through a great deal of stress at considerable expense."* Intervenors on this line alone spent well over \$2 million in legal fees, he said. This money came out of hard-earned salaries, retirement savings accounts, bank loans, and it is gone forever, he said. The LCRA spent millions, too, but the utility will recover its expenses by passing them on to the citizens of Texas.

Was it worth it?

*"Yes, because we didn't passively put our fate in someone else's hands,"* Flournoy said. *"At least for now, we have saved some of the natural world for our family's future generations."*

He continued, *"Forty-five years ago when President Lyndon Johnson announced he was sending more troops to Vietnam, I volunteered to go because I thought it was the right*

*thing to do. I was a red-blooded American youth who lived in the greatest country in the world where freedoms had been protected for generations. Sadly, I don't feel that way any more. The process we and all the other families had to endure made me feel like I was living in Russia in the days of communism and we no longer had any rights. This brutal, unfair process has been a very sad day not only for Texans, but for every American."*

### **Hackberry Creek Ranch**

TWA Director Rory Burroughs and his family operate the Hackberry Creek Ranch near Rotan in the heart of wind production country. Although Burroughs was keeping abreast of wind energy issues, he was caught off-guard by the notice from the utility company informing him that his family's ranch was located in the path of a potential transmission line. He immersed himself in the issue because not only was his ranch affected, but seven of the nine properties that he manages for absentee landowners were on potential routes for transmission lines.

While he couldn't act on behalf of the other landowners, he could get



Photo by D.K. Langford





informed and lead the effort for his family. At one point, he was attending three or four meetings per week regarding transmission lines.

The key component of public information is a series of Open Houses hosted by the utility companies. For landowners expecting a formal public hearing, these events are a disappointment.

*"Maps are scattered around a room. Experts are scattered around the room. As a landowner, it's up to you to find the information and find the experts,"* Burroughs said. *"Then, it is almost impossible to get a straight answer from any of the so-called experts. They have carefully rehearsed answers and if you push them outside of their boxes, they get defensive."*

For Burroughs, who makes his living from the land, his primary concern was the transmission line's impact on the environment.

*"Because of my land ethic, I was incensed by how little effort was put into creating a thorough Environmental Impact Assessment (EIA),"* Burroughs said. *"The utility was trying to pass off a cookie cutter template as real science."* A complete EIA takes

two years to three years, he said. The CREZ project's compressed timeline was forcing them to be completed in 18 months, he said. The rush job was obvious.

*"For example, the utility listed its primary maintenance concern as vegetation growing into the conductors,"* Burroughs said. *"In East Texas, you might have to worry about tall trees, but out here mesquites don't generally grow 145 feet tall. Obviously, this is just a minor example, but it is a clear indicator of the flaws throughout."*

This disregard for environmental impact was evident in the selection of the routes. Burroughs and other ranchers questioned why the utility company was proposing to build a line through rough canyon lands when six miles to the south there was plowed farmland that could accommodate the line, allowing cheaper construction and maintenance.

The Burroughs family chose to intervene and, despite the fact that Rory's father was an attorney with 40 years experience practicing civil and criminal law, their intervention was rejected on a technicality.

*"Administrative Law is a whole different animal,"* he said. *"From the beginning of the process, the opposing attorneys are looking for ways to weed interveners out. This process isn't designed to necessarily do what's best, but to get transmission lines built as fast as possible."* If someone decides to intervene, it's important that they hire attorneys who are experts in public utility cases and Administrative Law, he said.

The Burroughs family lived with the prospect of having their ranch devalued by up to 40 percent and having no say where the transmission line might be placed. After 11 months of anticipation and stress, the line was sited along the route that cut through the farmland. The affected parties had agreed that this was the best route for the line and provided objective arguments to support their contention. Eventually, the utility chose the path of least resistance and presented that option to the PUC. At

this writing, the affected parties are waiting to hear if the PUC will accept this route or go another direction. Even though everyone agreed, the PUC has the final say and there are no guarantees, Burroughs said.

*"I wouldn't wish this process on my worst enemy,"* Burroughs said. *"For months, I slept less than three hours a night because all I could think of was this threat to our land, to our home. It cost me jobs. It cost me money. It cost me peace of mind. And at every turn, the process thwarted our efforts to stand up for what was ours. I was on an emotional roller coaster that never stopped, but it was our only option. I did what I had to do."*

### **Clear View Alliance**

When Bill Neiman received his notice from the utility company, he was only slightly concerned. His attention was focused on the 20 employees and the farming operation that are the foundation of his company, Native American Seed, which is based in the Llano River bottom near Junction. Then, he attended the informational open house and after reviewing the maps realized that the utility was coming cross-country, slashing a new corridor through previously undisturbed ranchlands, instead of following existing rights-of-way like highways. One route ran over the top of his farm headquarters that had been built in 1910.

*"The lines on the maps at the open house went right over people's homes and businesses,"* Neiman said. *"I knew something was really wrong because the utility representatives literally didn't see us, the people who lived on the land. As the process went further, it became obvious how much more they didn't see or didn't care to see."*

As proposed, his farm and many of the surrounding properties would be bisected diagonally, fragmenting the land from property line to property line. As he listened to his friends and neighbors, it also became apparent that the siting process would pit neighbor against neighbor.



*"The biggest flaw in the process was that no one ever came to our community and said, 'The state has a problem. We need you to help fix it,'" Neiman said. "There wasn't a chance for people to create a workable solution and buy into it, because this is a mandate that had been decided in and issued from Austin." As part of the CREZ process, the utilities don't have to prove that the lines are necessary because they are mandated by the Legislature.*

In response, he and other like-minded individuals created the Clear View Alliance. For almost two years, they have been fighting to have the transmission line placed along the Hwy. 277/I-10 corridor to minimize fragmentation and disruption of the western Hill Country.

*"It took about 20 minutes of looking at those maps and talking among impacted landowners to determine that it was in the best interest of the Hill Country to route the transmission line down the Hwy. 277/I-10 corridor," Neiman said. "I've just spent the past 19 months trying to get the decision-makers in Austin to arrive at the same common-sense conclusion."*

He continued, *"The siting of transmission lines seems to fly in the face of what we commonly perceive as democracy. It may not reflect what the majority wants. It's certainly not a popularity contest. It is more about following the paths of least resistance – the burden is upon the landowners to figure out that resistance."*

CVA intervened on behalf of 242 landowners, the largest intervention ever brought before the PUC.

Anyone considering getting involved on a regional or community-wide basis should find an attorney who is comfortable working with a group of landowners with identifiable, common goals, Neiman said. It is imperative the attorney understands Administrative Law and the utility regulatory system.

Administrative Law uses a different language and relies on a different standard, Neiman said. Administrative Law allegedly goes on the pre-

ponderance of evidence, not on the idea of beyond reasonable doubt, he said.

Essentially interveners have to convince an Administrative Law Judge that their evidence is more compelling than that of the other interveners and the utilities.

*"Interestingly, under the parameters of Administrative Law, the landowners whose lives are being turned upside down, don't qualify to testify," Neiman said. "To submit testimony and have it carry weight in the process, a person has to have credentials that are specific to transmission line siting issues and, preferably, have a track record as an expert witness."*

Landowners and their experts can expect a steep uphill climb when it comes to challenging a utility's engineer on issues that seem to contain flaws or errors, he said. On the other hand, an opposing landowner's attorney can heatedly attack your best documented arguments, he said.

Expertise, both legal and topical, is expensive. Clear View has also mounted an impressive public awareness campaign to help shed light on the ugly transmission side of wind energy. Neiman estimates that

the Clear View Alliance's expenses will exceed \$400,000. In his experience, most individual interveners are incurring legal expenses in the \$75,000 - \$100,000 range, although he knows of at least one Hill Country landowner who spent more than \$300,000 for an individual intervention.

*"It's hard to know just who the enemy is," Neiman said. "In the end, the utility has been ordered to build the line by the PUC. The Legislature has ordered the PUC to get it done posthaste. These mandates cause opposing landowner's attorneys to duke it out...slashing through the very fabric of ranching families, communities and the land itself. This process is not for the weak of heart."*

But is it worth it?

*"For almost two years now, I've lived with the prospect of this transmission line," Neiman said. "It's overshadowed every aspect of my life. Even now that the hearings are finished, I don't know what the outcome is going to be, but when it's all said and done, I will know that we did everything we could to preserve the Hill Country's wide open spaces and our way of life for the benefit of future generations. That keeps me going." 🍷*



Photo by Russell Graves

