

CAUSE NO. D-1-GV-11-000324

**CITY OF KERRVILLE, KERRVILLE
PUBLIC UTILITY BOARD, AND CITY
OF JUNCTION**

Plaintiff,

vs.

**PUBLIC UTILITY COMMISSION OF
TEXAS**

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

**INTERVENOR LCRA TRANSMISSION SERVICES CORPORATION'S
RESPONSE BRIEF**

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- B. LCRA TSC Ex. 26, Hearing on the Merits; Record Section II (Exhibits), Binder 29
- C. Order of the Public Utility Commission, PUC Dkt. No. 38354 (January 24, 2011) and SOAH Proposal for Decision, PUC Dkt. No. 38354, SOAH Dkt No. 473-10-5546 (December 16, 2010)
- D. Excerpts of maps in Application related to vicinity of Link Y11, pages labeled w/notes to Application and Environmental Assessment, from Record Section II (Exhibits), Binders 18 & 21.
- E. LCRA TSC Ex. 14, Rebuttal Testimony of Curtis Symank, Exhibits CDS-5REB, -7REB, and -8REB; Record Section II (Exhibits) Binder 28.
- F. Additional copies of Exhibits CDS-7REB and -8REB with counsel's hand markings.
- G. 9 TEX. GOV'T CODE § 2003.049 (g) & (h)
- H. 1 TEX. UTILITIES CODE § 37.056, within portion of Util. Code referred to as Public Utility Regulatory Act or PURA
- I. 1 TEX. ADMINISTRATIVE CODE § 25.101 (b)(3)(B), Texas Public Utility Commission (PUC) Substantive Rules
- J. Revised Community Values Chart, based on Exhibit G to Plaintiffs' Brief and revisions from record evidence

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Plaintiff,	§	
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	§	
PUBLIC UTILITY COMMISSION OF	§	
TEXAS	§	
Defendant.	§	98TH JUDICIAL DISTRICT

**INTERVENOR LCRA TRANSMISSION SERVICES CORPORATION'S
RESPONSE BRIEF**

TO THE HONORABLE JUDGE LIVINGSTON:

COMES NOW, Intervenor LCRA Transmission Services Corporation (LCRA TSC) and files this, its Response Brief in support of Defendant, Public Utility Commission of Texas (PUC or Commission), and in support thereof would respectfully show as follows:

I. COUNTER STATEMENT OF THE NATURE OF THE CASE

Intervenor, LCRA TSC concurs with the Plaintiffs' Statement of the Nature of the Case, as written.¹ However, by way of additional information LCRA TSC would note that PUC Docket No. 38354 (the case at bar) was LCRA TSC's application for a certificate of convenience and necessity (CCN) to construct a transmission line ordered by the PUC as part of the Commission's mandate under PURA § 39.904, "Goal for Renewable Energy."² PURA § 39.904 charges the PUC with the dual task of creating "competitive renewable energy zones" (CREZs) and establishing a plan to construct the necessary transmission capacity to deliver the renewable energy output of the five individual CREZs established by Commission order to customers "...in a manner that is most beneficial and cost effective."³

¹ "Plaintiffs," collectively refers to the City of Kerrville, Kerrville Public Utility Board (KPUB), and the City of Junction as well as Kerr County, which did not appeal PUC Docket No. 38354 but intervened in this cause and has aligned itself with the three plaintiffs in chief.

² TEX. UTIL. CODE §39.904 (West 2007, Supp. 2010). The applicable portion of the Texas Utilities Code is also known as the Public Utility Regulatory Act or PURA and may be referred to as PURA throughout this Brief.

³ Id. §39.904(g)(2).

II. COUNTER STATEMENT OF FACTS

While Plaintiffs' Statement of Facts⁴ contains many assertions that LCRA TSC does not agree with or believes are not accurate,⁵ one substantive asserted fact and one procedural fact are egregiously incorrect and will be specifically addressed in this Reply.

A. Plaintiffs Mischaracterized the Nature and Number of Routes Available in LCRA TSC's Application

As described at pages 2 and 3 of their Brief, Plaintiffs mischaracterize a key substantive fact with respect to LCRA TSC's Application. Plaintiffs characterize LCRA TSC's Application as containing "a total of 60 potential routes" for the proposed transmission line.⁶ This attempt to limit the scope of LCRA TSC's Application is a necessary prerequisite for Plaintiffs' subsequent argument that the "ALJs admitted an exhibit providing information on a number of these 'new' routes that had not initially been filed in LCRA TSC's Application," one of which was selected by the Commission with some adjustments.⁷

In fact, LCRA TSC (through the work of its consultants PBS&J) presented a multi-volume, multi-disciplinary "environmental assessment" ("EA")⁸ that contained an interconnected network of 161 routing links that together could form as many as *20,000 forward progressing transmission line routes*, depending on the combination of links.⁹ Factual support for all applicable PUC routing criteria was provided by LCRA TSC's witnesses¹⁰ including environmental and human impacts, cost, and constructability. Thus, LCRA TSC's witnesses showed that any end-to-end route that was forward progressing from the McCamey D station to the Kendall station and comprised of various noticed links would be reasonable, reliable, viable, and constructible.

⁴ Plaintiffs' Brief at 2-5.

⁵ For example, Plaintiffs characterize LCRA TSC's application as seeking "authority from the Commission to construct a transmission line...". Plaintiffs' Brief at 2. While this description would be adequate for a normal certificate case where both "need" for a line and the appropriate "route" are issues, it does not describe a CREZ proceeding. *Need* was not an issue in the proceedings below. See discussion in Introduction and Argument, below.

⁶ Plaintiffs' Brief at 2, in Statement of Facts.

⁷ Plaintiffs' Brief at 5.

⁸ The environmental assessment is contained at Record, Section II (Exhibits), Binders 17-19, LCRA TSC's Application Vols. 2-4 of 7.

⁹ LCRA TSC Exh. 2, Testimony of Sara Morgenroth at 27; 30 (Record, Section II (Exhibits), Binder 25); LCRA TSC Exh. 9, Testimony of Rob R. Reid at 32 (Record, Section II (Exhibits), Binder 28).

¹⁰ See generally testimonies cited in previous footnote and LCRA TSC Exh. 7, Symank Testimony, Record Vol. II (Exhibits), Binder 28.

To facilitate the analysis the Commission and the parties would undertake upon review of its CCN application, LCRA TSC numbered 60 of the possible routes, carefully ensuring that each of the studied links were used in some route. Parties were informed that 60 alternative routes (combinations of these links) were presented to compare “an adequate number of reasonable, viable, geographically-varied alternative routes” in light of the line length, study area characteristics, and routing opportunity areas.¹¹ While one of these routes, Route MK13, was presented as LCRA TSC’s Preferred Route, all affected landowners were informed in LCRA TSC’s notice that:

Please Note: While LCRA TSC is required to propose a “preferred route”, the PUC may and often does select an alternate route. As discussed in the enclosed brochure, *any one of the proposed routes or a new combination of route segments filed in this application may be selected by the Commission. Additionally, the Commission may modify the proposed routes and segments into different configurations than those proposed so long as they affect only noticed landowners.* (bold in original, italics emphasis added).¹² (Brief Attachment A)

As required by the PUC’s CCN application instructions this language was vetted and approved by PUC Staff more than a week before LCRA TSC’s CCN application was filed.¹³ LCRA TSC was completely open and transparent when its Senior Regulatory Case Manager, Sara Morgenroth, stated at the beginning of the case that links could be “mixed and matched” to depict additional routes:

...LCRA TSC has provided additional information in testimony to allow the Commission to create additional routes by providing: [cost tables, land use and environmental data by segment, habitable structure information and segment/route usage tables].¹⁴

The State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) emphasized this point by informing all parties and potential parties to the case in SOAH Order No. 1 issued on July 30, 2010¹⁵ as follows:

¹¹ LCRA TSC Exh. 2, Testimony of Sara Morgenroth at 27, 30 (Record, Section II (Exhibits), Binder 25); LCRA TSC Exh. 9, Testimony of Rob R. Reid at 32 (Record, Section II (Exhibits), Binder 28).

¹² LCRA TSC Application Vol. 1 of 7, Attachments 6, 8 and 11 (landowner mailed notice, public officials mailed notice and newspaper publication), contained in Record Section II (Exhibits), Binder 16.

¹³ Application at 39, (Record, Section II (Exhibits) Binder 16)

¹⁴ LCRA TSC Ex. 2, Morgenroth Testimony at 27 (Record Section II (Exhibits), Binder 25), which was filed as part of the Application on July 28, 2010 (Record, “Rate Filing Package” Vol 8 of 8).

¹⁵ Note: all filings in this docket were, and are, available for inspection on the Commission’s interchange by clicking on: <http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch.asp>, then insert-

VII. CAUTION TO INTERESTED PARTIES

In this proceeding, LCRA TSC has described several alternate routes that the proposed transmission line may ultimately follow. One of those routes for each segment of the line has been designated by the Applicant as its “preferred route.” Parties are cautioned that this designation carries no significance in the decision-making process. LCRA TSC has stated that any one of the routes proposed would meet the statutory and regulatory criteria. It is the duty of the ALJs and, ultimately, the Commission to choose the route that best meets those criteria. Any proposed route, *or any combination of properly noticed proposed links*, could be selected. It is the duty of interested parties to intervene and provide the decision-makers the information needed to reach a just and reasonable decision. (emphasis added)¹⁶

The Commission itself in its Order found clearly that:

LCRA [TSC] filed 60 alternative routes. The links in the application can be combined to form over 20,000 different forward progressing routes.¹⁷

Thus, contrary to Plaintiffs’ implication, the 60 routes explicitly presented were not the only routes in LCRA TSC’s Application. While LCRA TSC presented 60 routes for “evaluation” and comparison in its Application,¹⁸ it also provided in its initial filing the full data for all links that could be assembled to form the more than 20,000 routes available in the case. Since the full data was in evidence as a part of LCRA TSC’s application, Plaintiffs are correct that, as a result of the availability of the data, the ALJs requested during the Hearing on the Merits that LCRA TSC provide an exhibit that showed additional combinations of links.¹⁹ This exhibit (LCRA TSC Ex. 26, Brief Attachment B) included both combinations/variations of links proposed by individual intervenors and the PUC Staff, and some formulated by the ALJs themselves.²⁰ Included among these is the route known as “MK63,” which was further modified (with additional noticed links) and ultimately selected by the Commission as its approved route.²¹ However, contrary to the Plaintiffs’ Statement of Facts, MK63 was not a “new” route, but represented two things. First, it was a combination of existing noticed links, consistent with

ing 38354 in the “Control Number” box. The ALJs repeatedly emphasized this point. See, e.g., SOAH Order No. 1 at 6, SOAH Order No. 2 at 1-2, Record Section I (Filings), Binder I, Items 8 and 9.

¹⁶ SOAH Order No. 1 at 6, Record, Section I (Filings), Binder 1, Item No. 8.

¹⁷ PUC Order, January 24, 2011 at Finding of Fact No. 5. The PUC Order and SOAH Proposal for Decision (PFD) are found at Brief Attachment C.

¹⁸ See LCRA TSC Ex. 9, Reid Testimony at 32 (Record Section II (Exhibits), Binder 28).

¹⁹ Plaintiffs’ Brief at 5.

²⁰ LCRA TSC Ex. 26 is found at Record Section II (Exhibits), Binder 29.

²¹ See PUC Order at 1-2 *et seq.*

LCRA TSC's evidence and notice along with the ALJs' clear instructions to the parties. Second, the key links complained of in Plaintiffs' objections were all part of the 60 routes initially presented for comparison purposes, making Plaintiffs' representations of a "new" route misleading and inaccurate.

Both areas of links related to Plaintiffs' concerns were presented in the 60 numbered routes. First, links near Junction (including Link Y11) were used in three of the 60 numbered routes.²² Second, links along I-10 near Kerrville and Kerr County opposed during the hearing by the Kerrville area parties (i.e., the City of Kerrville, KPUB, and landowner, Cecil Atkission) were included in either eight routes or, in the case of Kerr County's opposition, in a range of two to twenty-three routes.²³ Plaintiffs Kerrville, KPUB, and intervenor Kerr County presented all of their objections and evidence responsive to all potential routes with links in and near Kerrville through testimony, cross-examination and argument as part of the hearing process.²⁴ In fact, Kerrville, *et al.* stated twice in the first page of their Initial Brief after the Hearing on the Merits that they opposed certain routing *links* and "all proposed routes that incorporate these links."²⁵ Indeed, Kerrville even understood that the so-called "new" Route MK63 was "proposed" and in play because it argued against that route in its Initial Brief and Reply Brief, long before the Commission actually approved MK63 at the Open Meeting of January 20, 2011.²⁶

Factually, the route selected by the Commission was not "new" to either LCRA TSC's Application or the contested case hearing process. Indeed, Route MK63 was not even that dissimilar from many of the 60 assembled routes initially presented by LCRA TSC for comparison

²² See LCRA TSC Ex. 2, Morgenroth Testimony at Exhibit SM-2 Rev. p. 6 of 6 (Record, Section II (Exhibits), Binder 25). Link Y11 is complained about by Junction in Point of Error No. 1. That link as well as Links Y9, Y10b, Y12a, and Y13 necessary to use Y11, are found in three numbered routes, MK 33, 38 and 39.

²³ See *Id.* at 1-5. Particularly noteworthy is Route MK19, which uses precisely the same routing segments through Kerrville and Kerr County as does the Commission's Modified Route MK63: b29c – b29d – y16 – y17b – y18 – y19 – y20 – c1b – c1c – c14a – c11b – c14c – c18aa – c18ab – c18b – c21.

²⁴ Kerrville's testimony and exhibits may be found at Kerrville Exhibits 1-14 at Record, Section II (Exhibits), Binder 15. Kerr County Exhibits 1-3 and KPUB testimony may be found at the same location. Cecil Atkission, an intervenor below represented by the same counsel as Kerrville and Kerr County, provided Direct Testimony found at Record, Section II (Exhibits), Binder 11. Kerrville *et al.*'s witnesses were cross-examined at hearing on October 27 and 29 (Tr. Vol. 3 at 570-583 and 681-725; Tr. Vol. 5 at 951-967) (Record, Section III (Transcripts) at Vols. L and N). Kerrville *et al.*'s two counsel cross examined witnesses on October 25, 28, 29 and November 1 (Tr. Vols. 1, 4, 5 and 6) (Record, Section III (Transcripts) at Vols. J, M, N and P). Kerrville *et al.* filed a Brief on November 15 and a Reply Brief on November 22 Record, Section I (Filings), Binders 7 and 8. As noted in this Reply, below, the City of Junction did not appear at the hearing, offered no testimony or briefing, and did not participate in cross examination of any witness.

²⁵ Kerrville Brief at 3, Record Section I (Filings), Binder No. 7.

²⁶ *Id.* at 10 and see Kerrville *et. al.* Reply Brief at 2 & 6. Record, Section I (Filings) at Binder 8, Item 392.

purposes. This alleged “new” route contained the same routing links found in routes included within the 60 initially-identified routes (and, by definition, within the noticed links that could be combined into the 20,000 possible routes mentioned above), and Kerrville *et al.* had every opportunity to bring forward evidence on why they purportedly failed to meet the Commission’s routing criteria and should not be used.

B. Plaintiffs Fail to Explain City of Junction’s Minimal Participation in this Case

Plaintiffs’ Statement of Facts acknowledges only that the City of Junction filed an intervention in PUC Docket No. 38354 on August 26, 2010 and then a Statement of Position on September 27, 2010.²⁷ While correct as far as it goes, this bare statement fails to completely describe the consequences to the evidentiary record of Junction’s intentional decision not to participate in the hearing. Junction’s “Statement of Position” in the proceeding²⁸ did not explicitly take any position with regard to the portion of Link Y11 at issue here.²⁹ In fact, Junction’s Statement of Position was not notably different from the basic position taken by virtually every party and commenter in this case except one (i.e. AC Ranches); namely, Junction wanted the Commission to route the line away from itself. More to the point, Junction did not appear at the Hearing on the Merits (where extensive factual discussions regarding the Kimble County Airport occurred) to offer or cross-examine witnesses, despite the fact that Clear View Alliance witness Frank McIlwain had raised the possibility of moving this portion of Link Y11 farther south as early as September 28, 2010, over a month before the Hearing.³⁰ Additionally, Junction did not file a Brief discussing the hearing evidence. The significance of this failure will be discussed in Point of Error No. 1 below.

III. INTRODUCTION AND ARGUMENT GERMANE TO ALL REPLY POINTS

A. Introduction to the Argument

The Plaintiffs fundamentally mistake and ignore the standard of review applicable in this proceeding, which is the substantial evidence review. The test under this review is whether any reasonable basis exists in the record for the action taken by the Commission. LCRA TSC will demonstrate in this Response Brief, in detail, that extensive evidence in the record supports the

²⁷ Plaintiffs’ Brief at 4.

²⁸ See Attachment H to Plaintiffs’ Brief.

²⁹ The Statement only addresses a portion of the six mile long Link Y11 that is located well south and east of the area near the Kimble County Airport, not near the airport itself. See Attachment H, p. 2.

³⁰ Clear View Alliance Ex. 7, McIlwain Testimony at 8, Record Section II (Exhibits,) Binder 12.

findings in the Commission's Order. Plaintiffs' Brief fails to address this evidence and the ability of this court to overturn the Commission's Order based on the applicable standard of review. As to each Reply Point, LCRA TSC will identify the errors in the legal standard advocated by Plaintiffs and the factual misstatements and omissions that result in fundamental mistakes in Plaintiffs' Points of Error.

B. This Case's Significance Within the Context of Legislative Mandates for Renewable Energy

The Plaintiffs' Brief does not place this case in context nor does it sufficiently explain the facts underlying the nature of LCRA TSC's CCN filing. PUC Docket No. 38354 was one of a series of over 35 contested case applications filed and litigated before the PUC and SOAH as part of the implementation of goals for renewable energy mandated by the Texas Legislature in 2005.³¹ As part of a mandate to achieve the installation of certain quantities of renewable energy generation in Texas,³² the Legislature required the designation of CREZs as locations where land and other resource conditions were sufficient to develop wind power and other renewable resources.³³ Along with the designation of these CREZs in suitable areas, the Legislature ordered the development of a plan "to construct transmission capacity necessary to deliver" to electric customers renewable energy facility electrical output.³⁴ The electric customers concerned include those within the large portion of the Texas electric grid regulated by the PUC, including those customers located in the Hill Country and the broader Central Texas area.³⁵

In order to provide for this transmission capacity in a manner most beneficial and cost-effective to electric customers,³⁶ the PUC conducted a series of contested case proceedings to select the CREZs, determine a CREZ transmission plan to connect the zones with areas needing the electricity generated, and designate the providers who would construct and operate the needed transmission improvements.³⁷ The Commission established five CREZs that recognized a total of 18,456 megawatts (MW) of wind generation potential, with about 63% of the wind generation consisting of new potential generation.³⁸ The Commission then identified over 100

³¹ See generally TEX. UTIL. CODE § 39.904, *codified from* SB20, Act of July 14, 2005, 79th Leg., 1st C.S. (2005).

³² *Id.* at § 39.904(a).

³³ *Id.* at § 39.904(g)(1).

³⁴ *Id.* at § 39.904(g)(2).

³⁵ LCRA TSC Ex. 6, Garza Dir. Test. at 14 (Record, Section II (Exhibits), Binder 28).

³⁶ See TEX. UTIL. CODE § 39.904(g)(2).

³⁷ LCRA TSC Ex. 6, Garza Dir. Test. at 11 (Record, Section II (Exhibits), Binder 28)

³⁸ *Id.* at 13, referencing PUC Dkt. No. 33672 (Order on Rehearing, October 6, 2008).

high-voltage electric transmission projects necessary to deliver the generated electrical energy to customers, with an estimated construction cost of \$4.9 billion.³⁹ The CREZ transmission plan requires the timely construction of over 2,300 miles of transmission lines. Included in the over 100 transmission projects were 13 projects designated “Priority Projects” because these projects not only facilitate the CREZ goals established by the Legislature and the Commission, they are also critical in providing relief to costly existing electrical system constraints.⁴⁰

The McCamey D to Kendall 345-kV double-circuit transmission line was designated as one of these “Priority Projects,” and was one of several Priority and non-Priority CREZ projects subsequently assigned to be constructed by LCRA TSC.⁴¹ It is the only CREZ high capacity 345-kV transmission line with a connection to the south. As a result of legislative mandate and the Commission’s described determinations, the McCamey D - Kendall project was found to be “needed” by electrical customers in the state, meaning that only the “routing” of the project (i.e., the location between two pre-determined end points) was to be determined in PUC Docket No. 38354.⁴²

C. LCRA TSC’s Application and PUC Consideration

Also critical to understanding the nature of the case for the matter under appeal is the scope of what the Commission was adjudicating in the underlying proceeding. This is a case with an enormous record. Potential transmission line routes were determined for inclusion in LCRA TSC’s Application through a multi-year analysis that included input from the public in the form of:

- 20 public meetings in 2009 and 2010 in 14 different locations in an eight-county study area, with over seven thousand different individual landowners invited as well as hundreds of federal, state and local officials;
- hundreds of individual written comments and phone calls from landowners and interested persons;
- numerous individual and group landowner meetings (some of which had numerous attendees), and

³⁹ *Id.*

⁴⁰ *Id.* See also LCRA TSC Exhibit No. 6, Garza Dir. Test. at 13 (Record Section II (Exhibits), Binder 28); Hearing on the Merits, Vol. 6 Nov. 1, 2010; Tr. at 1190 (Record, Section III (Transcripts) Vol. P).

⁴¹ See generally discussion at LCRA TSC Ex. 2, Morgenroth Direct Testimony at 8, Record Section II (Exhibits), Binder 25, referencing PUC Dkt. No. 33665 (Order on Rehearing, May 15, 2009). The Dkt. No. 35665 Order was modified in ways not relevant here in PUC Dkt. No. 37298 (Order on Remand, February 25, 2010).

⁴² LCRA TSC EX. 1, Application at 20, Record Section II (Exhibits), Binder 16.

- resolutions of local governmental entities.⁴³

The study area analyzed for the evidentiary record was considered with a multi-discipline process and ultimately encompassed approximately 3,763 square miles (about the same size as the states of Rhode Island and Delaware).⁴⁴ As a result of public and governmental agency input, this study area was expanded from its initial size and from its initial route links in Schleicher, Menard, Kimble, Gillespie, Kerr and Kendall counties to include additional route links paralleling another transmission line in Menard, Mason and Gillespie counties as well as route links paralleling or near U.S. Hwy. 277 and Interstate Highway 10 (I-10) in Schleicher, Sutton, Kimble, Kerr, and Kendall counties.⁴⁵ The evidence that was ultimately distilled from the CCN application and the record to become LCRA TSC Exhibit 26 (Attachment B to the Proposal for Decision) was derived from an analysis of 161 routing links for 41 land use, ecology and cultural resources criteria that was part of LCRA TSC's Environmental Assessment.⁴⁶

After LCRA TSC filed its Application in July of 2010, over 1,100 persons intervened. At the hearing on the merits, the testimony of some 176 intervenor witnesses (129 landowners and 47 experts or other witnesses) was offered along with the testimony of two PUC Staff witnesses. LCRA TSC presented a total of eleven witnesses, some testifying on both direct and rebuttal. Cross examination consumed six and one-half days. Over 60 initial and reply briefs were filed by the parties, many of whom were *pro se* intervenors who came to Austin to participate in the hearing. The Commission considered the merits of the case over two long Open Meeting deliberation sessions in January of 2011. By the time of its consideration, the Commission had the Proposal for Decision, Exceptions and Replies to Exceptions as well as the evidence of record and the Briefs and Reply Briefs filed before SOAH, all of which the Commission had reviewed and studied prior to the two Open Meetings. Thus, contrary to the assertions made by Plaintiffs that the Order was "results driven,"⁴⁷ it is hardly surprising that individual Commissioners may have had preliminary thoughts as they began their joint, public deliberations.

⁴³ LCRA TSC Ex. 2, Morgenroth Dir. Test. at 11-22, Record Section II (Exhibits), Binder 25.

⁴⁴ LCRA TSC Ex. 1, Application at 21-22, Record Section II. (Exhibits), Binder 16.

⁴⁵ See LCRA TSC Ex. 2, Morgenroth Dir. Test. at 9, 32, Record Section II (Exhibits), Binder 25.

⁴⁶ LCRA TSC Ex. 1, Application at 23 and Environmental Assessment at pp. 5-31/32, Record Section II (Exhibits), Binders 16 and 17; LCRA TSC Exh. 9, Reid Dir. Test. at 9, 11-12, 20, 21-23, Record Section II (Exhibits), Binder 28.

⁴⁷ Plaintiffs' Brief at 6.

IV. REPLIES TO PLAINTIFFS' POINTS OF ERROR

REPLY POINT NO. 1

THE COMMISSION'S ACTIONS IN SELECTING A ROUTE WHICH UTILIZES A MODIFIED VERSION OF LINK Y11 IN THE JUNCTION AREA ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. The Appropriate Legal Standard Under the Government Code and Commission Related Appellate Decisions Must Be Considered to Understand the Sufficiency of the Commission's Order.

The Commission's decision in a transmission line certification case is subject to what is generally referred to as the "substantial evidence" standard of review. The *Dunn* and *Hammack* cases⁴⁸ have specifically addressed issues in appeals of PUC electric transmission siting cases (such as this one) and have set forth standards of substantial evidence review in the context of a long series of cases under the Government Code and its predecessor Administrative Procedures Act. In addition to considering reviews of the balancing of factors the Commission must undertake under TEX. UTILITIES CODE § 37.056 (as discussed in Reply Points 3 and 4 below), *Dunn* and *Hammack* address the review of the specific question of whether an order is supported by "substantial evidence" as that term is used in TEX. GOV'T CODE § 2001.174(2)(E). In *Dunn*, the Third Court of Appeals explained:

An administrative decision is supported by substantial evidence if the evidence as a whole is such that reasonable minds could have reached the conclusion that the agency must have reached in order to justify its action. *Texas State Bd. Of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex.1988). Substantial evidence requires "only more than a mere scintilla," and the evidence on the record actually may preponderate against the decision of the agency and nonetheless amount to substantial evidence. *Railroad Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792-93 (Tex.1995). We may not substitute our judgment for that of the agency on the weight of the evidence. *ASAP Paging*, 213 S.W.3d at 392. The test is not whether in our view the agency reached the correct conclusion but whether some reasonable basis exists in the record for the agency's action. *Id.* at 393.⁴⁹

⁴⁸ *Dunn v. Public Utility Comm'n of Texas*, 246 S.W. 3d 788, 791 (Tex. App. – Austin 2008, no pet.); *Hammack v. Public Utility Comm'n of Texas*, 131 S.W. 3d 713, 725 (Tex. App. – Austin 2004, pet. den.)

⁴⁹ *Dunn*, 246 S.W.3d at 791.

In *Hammack*, the Third Court explained:

The crux of a substantial evidence analysis is whether the agency's factual findings are reasonable "in light of the evidence from which they were purportedly inferred." John E. Powers, *Agency Adjudications* 163 (1990). "Substantial evidence" is thus a term of art. It "does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" of fact. *Lauderdale*, 923 S.W.2d at 836 (quoting *Pierce v. Underwood*, 487 U.S. 552, 564-65, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)). Therefore, we will sustain an agency's finding if reasonable minds could have reached the same conclusion. *Texas State Bd. Of Dental Exam'rs v. Sizemore*, 759 S.W.2d 114, 116 (Tex.1988).⁵⁰

Both *Dunn* and *Hammack* rejected substantial evidence challenges to PUC electric transmission line siting orders. Showing a lack of substantial evidence for the Commission's Order is a difficult burden to meet, but Plaintiffs never even make the attempt.⁵¹

In their brief, the Plaintiffs completely fail to address the findings of the Commission Order or the evidence in a proper substantial evidence challenge, but instead attempt an "end run." Plaintiffs have elected to use an unusual strategy of focusing on discussion at the Commission's Open Meetings leading to the rendering of the Order of January 24, 2011 and then attributing unwarranted significance to that discussion and to the public comments ostensibly to provide an extra-record basis for the Commission's decisions.⁵² While the facts contrary to these claims will be discussed below, a review of the relevant legal principles in this situation is in order.

It has long been the rule in Texas that it is immaterial what a commissioner may have said or thought in the process of arriving at his or her decision, and that the thought processes or motivations of the administrator are irrelevant in the judicial determination of whether an agency order is reasonably sustained by appropriate findings and conclusions *that have support in the*

⁵⁰ *Hammack*, 131 S.W.3d at 725.

⁵¹ Plaintiffs' Brief repeatedly asserts that various parts of the Commission's Order are not supported by a "preponderance" of evidence in the record. See Plaintiffs' Brief at 20, 26, 27. Their reliance on such a standard is misplaced, as the substantial evidence review that applies to this case looks only at whether there was some reasonable basis in the record for the Commission's actions, and does not allow a reviewing court to consider substitute findings based on what Plaintiffs feel to be the "preponderance" of the evidence. *R.R. Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792-93 (Tex. 1995)

⁵² Plaintiffs' Brief at 8-12. Plaintiffs also emphasize the purported significance of a letter filed by LCRA TSC on January 19, 2011, prior to the Commission's second Open Meeting. This letter addressed several areas discussed by the Commissioners at the first Open Meeting but is cited by Plaintiffs as containing the alleged "LCRA TSC modification" of Link Y11 south of the Kimble County Airport. As explained in Section 1.B.1. and 1.B.2. below, the Commissioners' own remarks cited by Plaintiffs, show that neither this letter nor any statements at Open Meetings were admitted as evidence or relied on in the Order.

evidence.⁵³ Error is not shown where the discussion in the Commission Open Meeting demonstrates an allowable process of struggling to reach a result based on *evidence* produced.⁵⁴ While the transcript of agency decision-makers' deliberations may contain references to outside circumstances or events, such references are immaterial where ultimately the decision-makers base their decision on appropriate criteria supported by *evidence* in the record.⁵⁵ Finally, even in the case of the alleged proffer of extra-record communications containing supposed "off-record facts," harm and proof that the decision-makers' minds were "irrevocably closed on the matters at issue" must be shown;⁵⁶ by definition, harm cannot be shown where the evidence *in the record* demonstrates that reasonable minds could have reached the agency's conclusion.⁵⁷ Decision-makers are presumed fair, honest, unbiased, and capable of judging a particular controversy fairly on the basis of its own circumstances,⁵⁸ and that they therefore utilized record evidence to make a decision. The facts show that this occurred with respect to the Commission's January 24, 2011 Order because: (1) the Order does not do what Plaintiffs allege, (i.e. it is not based on the material alleged by Plaintiffs to be "evidence" or "extra record"), and (2) the *evidence* actually supports the Order's findings.

As a final piece of legal background for the Commission's Order and in response to allegations of "modifications" made throughout the Commission's process, it is appropriate to note that the Third Court of Appeals has recognized in the *Chocolate Bayou* case that modifications to an application before an administrative agency are acceptable where parties have been placed on notice that their interests were at risk.⁵⁹ The *Chocolate Bayou* court found that attempting to use the differences between an initial application and the agency's ultimately approved result was an impermissible collateral attack on the agency order, where the subject matter of the application

⁵³ *City of Frisco v. Texas Water Rights Comm'n*, 579 S.W. 2d 66, 72 (Tex. Civ. App. – Austin 1979, writ ref'd n.r.e.)

⁵⁴ *Pedernales Electric Cooperative v. Public Utility Comm'n of Texas*, 809 S.W. 2d 332, 342-343 (Tex App. – Austin 1991, no writ). The exception to the "no review of thought processes" rule requires proof of "corruption at the inception," which has been neither alleged nor proved by Plaintiffs.

⁵⁵ *Lone Star R.V. Sales, Inc. v. Motor Vehicle Board of the Texas Department of Transportation*, 49 S.W. 3d 492, 502 (Tex. App. – Austin 2001, no writ)

⁵⁶ See *Hammack*, 131 S.W. 3d at 730-732 (discussing alleged *ex parte* communications, including, among other things, letters and *amicus curiae* filings).

⁵⁷ Cf. *Pedernales*, 809 S.W. 2d at 342 (thought process irrelevant if the agency order has appropriate findings and evidence to support them).

⁵⁸ See *Hammack*, 131 S.W. 3d at 731.

⁵⁹ See *Chocolate Bayou Water Co. v. Tex. Natural Res. Conservation Comm'n*, 124 S.W.3d 844, 850-51 (Tex.App. – Austin 2003, no pet.)

placed the complaining litigants' interests at issue.⁶⁰ In this proceeding below, it is clear that the Commission has established its legal foundation to adjust routing links without landowner consent as part of its decision-making process in determining an "approved" route, so long as those landowners are noticed. As noted above, Commission Staff approved LCRA TSC's notice letters (as sent to individual landowners and governmental entities) which contain the following language in bold-face type:

...any one of the proposed routes or a new combination of route segments filed in this application may be selected by the Commission. Additionally, the Commission may modify the proposed routes and segments into different configurations than those proposed so long as they affect only noticed landowners.⁶¹ (Bold in original, emphasis in italics added)

Indeed, the ALJs in the SOAH hearing process refused to dismiss from the proceeding persons who had been noticed but who did not initially have route links on their property because "the ALJs and the Commission may consider and approve a route...which directly affects..." their property.⁶² In light of such clear and explicit warnings and of the relevant legal standards, Plaintiffs' claims of lack of notice and "due course of law" violations have no basis.

Plaintiffs' claim that adjusted Link Y11 is so different from Link Y11 as proposed in LCRA TSC's application that it "...essentially constitutes a brand new link"⁶³ is nonsense and bootstrapping of the highest order. Adjusted Link Y11 is simply that – adjusted. It is not "essentially a new link". In fact, the end points of Link Y11 have never changed and only a small portion of the 6-mile link is being adjusted. The court will note that the Commission did not dictate where the line would ultimately be sited. Instead, LCRA TSC was given general parameters within which to construct the line, NOT a particular location on the ground (see discussion, below). At the time of this writing (and as required by the Commission in its Order), LCRA TSC's engineers are continuing to work effectively with affected landowners and the Federal Aviation Association (FAA) to achieve the optimum location of the route. However, this detailed design phase proves LCRA TSC's point made at hearing, at the Open Meetings, and in this Response

⁶⁰ *Id.* at 851.

⁶¹ See footnote 12, above. The Commission's Order found the notice to be sufficient. See Order, January 24, 2011 at Findings of Fact 10-15 and Conclusions of Law 4 and 6. (Brief Attachment C)

⁶² SOAH Order No. 16, October 18, 2010 at 9 (Record Section I (Filings) Binder 5, Item 234).

⁶³ Plaintiffs' Brief at 12.

Brief; namely, the adjustment to Link Y11 is the type of adjustment currently being made to the line at any number of locations along its course, and the adjustment affects only noticed landowners. Contrary to Plaintiffs' strawmen allegations, the adjustment to Link Y11 is the type of adjustment regularly ordered by the Commission and regularly made by LCRA TSC in this and other transmission line CCN cases.⁶⁴

B. The Plaintiffs' Claims Are Either Incorrect or Waived

1. Plaintiffs Do Not Demonstrate How the Order Relies on Extra-Record Evidence or Concepts to Reach Its Result on Link Y11

The linchpin of Plaintiffs' argument is that "The Commissioners expressed their approval of the LCRA TSC Modification"⁶⁵. The Commissioners *did no such thing in the Order*. All of the citations and discussions of Plaintiffs' Brief at pages 9-12 fail to point to a place in the Commission's January 24, 2011 Order that either (1) adopted "the LCRA TSC Modification," (2) incorporated any intervenors' conceptualization of what to do in the vicinity of Junction, or (3) relied on any extra-record facts or discussion about what could be done to modify Link Y11. Plaintiffs pointedly avoid a discussion of the Order altogether, most likely because the Order neither says what they think it says ("LCRA TSC's Modification is adopted") nor does it rely on extra-record depictions of a modified Link Y11 (i.e. the photo depictions contained in Attachment D to Plaintiffs' Brief). What the Order requires is simple:

LCRA shall, in the vicinity immediately south of the Kimball [sic] County Airport, move Link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners.⁶⁶

No specific configuration "proposed" by anyone is adopted. No specific illustrations or diagrams are referenced, approved, adopted or "admitted" to be relied upon as evidence. The Plaintiffs pretend to acknowledge, but then ignore, the Commissioners' recognition that the illustrations discussed by the parties at the Open Meeting were not in the record.⁶⁷ What the Commis-

⁶⁴ As the court noted in the *Dunn* case, routing and constructing a transmission line is a dynamic process that continues in the field long after an order is issued. In *Dunn* the court recognized that Oncor Electric Delivery was actively trying to adjust the transmission line to landowners' property lines, a process completely consistent with the process in which LCRA TSC is currently engaged. See *Dunn*, 246 S.W.3d at 795, footnote 6.

⁶⁵ Plaintiffs' Brief at 12. See also Plaintiffs' Brief at 11 ("the Commission ultimately adopted the LCRA TSC Modification to Link Y11...")

⁶⁶ Order, January 24, 2011 at Ordering Paragraph No. 2 (page 24)

⁶⁷ Plaintiffs' Brief at 9; footnote 65 at 14-15.

sion actually approved is a set of instructions for routing adjustments on Link Y11 (based on record evidence) consistent with other types of routing adjustments that the Commission provides for in its Orders. In the *Dunn* case, the Third Court recognized that the Commission utilizes its powers to establish general parameters for construction of electric transmission lines that may allow for changes even after the order.⁶⁸ The Commission utilized its powers in the current Order, providing for a variety of circumstances in Ordering Paragraphs 2, 3, 4, 5, 6, 7, 8, 13 and 21 whereby LCRA TSC may adjust, modify, or move the location and configuration of the certified route.

The Commission expects that parties will propose minor route adjustments (“modifications”) to links forming portions of routes throughout the hearing process, even after the close of the evidentiary hearing. Such modifications fall within the scope of the evidence where, as here, the applicant and its routing consultant study the entire area and present evidence to the Commission.⁶⁹ Such minor modifications can actually result in sizable moves geographically. For instance, on the sixth day of the hearing on the merits, PUC Staff asked LCRA TSC to consider moving Link b19c to the southern edge of a particular piece of property.⁷⁰ Such a modification would have moved the line over 5,000 feet,⁷¹ far larger than the modification ordered by the Commission for Link Y11, yet still a minor modification on noticed landowners and based solely on record evidence. The Y11 modification is no different, falling within the scope of the evidence, noticed area, and noticed process of the Commission.

Indeed, the ordering paragraphs noted above demonstrate the dynamic nature of the transmission line design process, and belie Plaintiffs’ assertions that parties (particularly Junction) have some sort of right to vet and challenge every conceivable final location for every route or route link ultimately approved by the PUC. On the contrary, LCRA TSC may make “minor”⁷² and “major deviations”⁷³ to the ultimate location of the line or a given link with landowner consent.

⁶⁸ See *Dunn*, 246 S.W.3d at 794 (Applicant ordered to pursue one of three courses of action if endangered species habitat is encountered).

⁶⁹ See *Hammack*, 131 S.W.3d at 728.

⁷⁰ Hearing on the Merits Tr. Vol. 6 at 1401-02, Record Section III (Transcripts) Vol. O (discussion of parcel ID number B19C-004).

⁷¹ See LCRA TSC Exh. 1, Application Attachment 3, Map Sheet 15 of 28 (Record, Section II (Exhibits) Binder 21).

⁷² Ordering Paragraph 5, Order.

⁷³ Ordering Paragraph 6, *Id.*

In addition, LCRA TSC may, upon consultation with the Texas Department of Transportation (TxDOT), move the location of the line to facilitate the usage of TxDOT right-of-way (ROW).⁷⁴ Such movement does not require landowner consent. Similarly, LCRA TSC may, without landowner consent, move the ultimate location of the line to accommodate safety concerns and issues raised by the FAA,⁷⁵ to deal with endangered species and the ongoing consultations with the United States Fish and Wildlife Service (USFWS) regarding LCRA TSC's requested Habitat Conservation Plan,⁷⁶ to deal with historical and archeological issues that arise in the field which require consultation with the Texas Historical Commission,⁷⁷ and to deal with safety and engineering constraints and concerns related to code compliance with National Electric Safety Code (NESC) and North American Electric Reliability Corporation (NERC) regulations.⁷⁸ Except for the two route modifications listed above that require landowner consent, all the routing modifications described subsequently can be made by LCRA TSC without landowner consent to address the particular exigencies described, and every one of those routing modifications can surpass the length of the adjustment ordered by the Commission to Link Y11. The Commission's actions regarding Y11 are entirely in keeping with both the PUC's standard practice and with the ordering paragraphs contained in the Order. Consequently, Plaintiffs' claims are completely without merit.

2. Additional Claims of Reliance on Extra Record Evidence in the Kerrville Area Are Baseless and Have Been Waived.

Plaintiffs' Point of Error No. 1 leaps through a variety of statements, assertions and speculation that purport to restate what the Order adopted regarding the City of Junction area. However, at page 15 Plaintiffs suddenly claim that the "Commission's Order itself proves that the Commission illegally relied" on public comments to wind up routing the line through *Kerrville*, an area approximately 50 miles from the (Junction) Kimble County Airport.⁷⁹ At the most basic level, Plaintiffs failed to explain what in the Commission Order "proves" this "illegality" in light of the legal test that requires consideration of the findings in the Order and the evidence on

⁷⁴ Ordering Paragraph 21, *Id.*

⁷⁵ FOF 110, 113-118a, 159, 160; Ordering Paragraph 2.

⁷⁶ FOF 61-72, 153, 156; Ordering Paragraphs 9-19.

⁷⁷ FOF 53-60; Ordering Paragraph 8.

⁷⁸ FOF 108, 109; Ordering Paragraphs 4, 7, 20.

⁷⁹ *Id.* at 16.

which they rely.⁸⁰ Moreover, Plaintiffs did not complain of this alleged “illegality” as part of their Motion for Rehearing⁸¹ and have therefore waived any claim in that regard.⁸²

Additionally, Plaintiffs simply failed to make their case even based on their citations to the Open Meeting transcripts. The Plaintiffs repeat their claim that the Commission heard “new evidence” or new “testimony” at least five times, but never establish the two points necessary to their case: (1) that the comments made at the Open Meetings *differed* from the evidence in the record; or (2) that the Commission acted *in reliance* on these comments in a way that the evidence in the record would not otherwise permit them to act. As discussed at length in the next section, the Commission’s actual Order never relied upon (or so much as mentioned) any public comment, but instead relied solely on the evidence in the administrative record provided by the ALJs. While the Plaintiffs attempt to mine the discussion at the Open Meeting (instead of the Order itself) for material to support their case, they fail to find any reference to the Commission relying on public comment. Rather, the quotes they find show the *exact opposite*.⁸³ The Kerrville Plaintiffs are left to speculate that there is “no doubt” that the Commission relied on public comment from the Tierra Linda subdivision because it chose a route that avoids that subdivision.⁸⁴ However the record evidence supports any number of routes, including routes (such as MK63) that avoid Tierra Linda altogether.⁸⁵ In other words, Plaintiffs’ only proof of improper reliance on public comment is a result unfavorable to them. Such self-serving but unsubstantiated “proof” cannot stand.

These assertions demonstrate a critical point for this Court’s substantial evidence review: it is not in Plaintiffs’ best interests or “legal theories” to deal with the actual *Order* of the Commission (which they do not address), and therefore their arguments and alleged “facts” are suspect at best.

⁸⁰ The Commission articulated the basis for routing along I-10 in the Kerrville area because of the greater desirability of paralleling I-10, at page 2 of its Order. The Commission’s decision is acceptable on an evidentiary basis, as shown in Reply Point 1, C.

⁸¹ See Plaintiffs’ Brief, Attachment A.

⁸² See *Hammack*, 131 S.W. 3d at 732.

⁸³ Plaintiffs’ Brief at fn. 65 (“At the beginning of the January 13, 2011 open meeting, the Chairman chastised the audience that the comments taken at the open meetings would be considered merely comments, rather than evidence.”); *Id.* at 14-15 (“...the Commission itself noted that ‘[t]he record is closed’”).

⁸⁴ *Id.* at 15-16.

⁸⁵ See PFD generally. Also see LCRA TSC Application (Record, Section II, (Exhibits) Binder 16-29).

C. The Substantial Evidence Supports the Commission's Fact Finding With Regard to Link Y11

Plaintiffs have completely failed to address the Order and the record evidence, choosing instead to claim an extra-record path to the Commission's decision. Though Plaintiffs waived these claims by failure to brief these points on appeal and cannot do so on Reply,⁸⁶ a review of that evidence nonetheless demonstrates evidence supporting the Commission's Order and the Commission's analysis of such evidence.

The factual evidence in the record provides a complete basis for the Commission's decision concerning the adjustment of a portion of Link Y11 in the Junction area,⁸⁷ along with the reasonable inferences from the evidence permitted under the TEX. GOV'T CODE. Tracing backwards in the Commission's January 24, 2011 Order, the following steps may be seen:

1) The Commission ordered in part in Ordering Paragraph No. 2:

LCRA shall, in the vicinity immediately south of the Kimball [sic] County Airport, move Link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners. This modification to Y11 shall not affect LCRA's ability to safely and reliably operate the line, nor shall it affect the safe use of the Kimball [sic] County Airport.

2) This is supported by Finding of Fact No. 160:

In the vicinity immediately south of the Kimball [sic] County Airport, it is appropriate for LCRA to move Link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners. It is not appropriate for this modification to Y11 to affect LCRA's ability to safely and reliably operate the line or the safe use of the Kimball [sic] County Airport.

3) In turn, Finding of Fact No. 160 is supported by the following findings of fact:

110. The Kimble County Airport presents a significant engineering constraint when routing to the south.

113. Link Y11, as filed, is south of the airport, and is part of MK33. It would be located approximately 1,200 to 1,800 feet from the south end of the airport's runway.

⁸⁶ *Sunbeam Environmental Services, Inc. v. Texas Workers' Compensation Insurance Facility*, 71 S.W.3d 846, 851 (Tex. App. – Austin, 2002 no pet.). *Si Kyu Kim v. Harstan, Ltd.*, 286 S.W.3d 629 (Tex. App.—El Paso 2009, pet. denied) (party that fails to address legal theory on appeal until reply brief has failed to preserve that theory for appellate review).

⁸⁷ In fact, Link Y11 is over six miles long, and the Commission ordered LCRA TSC to modify only a small portion of the link near the Kimble County Airport.²

- 114. Link Y11, as filed, would run through a flood plain north of the Llano River.
- 115. Link Y11 can be moved to the southern limit of noticed property owners.
- 116. LCRA cannot build a safe and reliable transmission line along link Y11 as filed using above-ground construction.
- 117. Because of the engineering constraints, link Y11 as filed would have to be built underground at the cost of \$54 million for one-half mile, and is prohibitively expensive.
- 118a. Link Y11, when moved to the southern limit of noticed property owners, can be built safely and reliably at a reasonable cost above-ground.⁸⁸

So, what factual evidence (and reasonable inferences drawn therefrom) supports the PUC's findings and Order? This can be understood by reviewing the position of LCRA TSC in litigating the Junction airport issues (which litigation significantly did *not* include the complaining Plaintiff, City of Junction). LCRA TSC began by demonstrating that an attempt to construct Link Y11 immediately adjacent to I-10 in this area would be disproportionately expensive (\$54 million for one-half mile) due to the need for underground construction.⁸⁹ LCRA TSC also demonstrated that, despite the claims of intervenor Clear View Alliance ("CVA"), the convergence of three engineering factors (aviation and two flooding related concerns) prevented less expensive overhead construction at the "immediately adjacent" I-10 location.⁹⁰ However, with respect to the convergence of the three factors, LCRA TSC's witness also noted that:

If each of these factors were considered in isolation, LCRA TSC could likely develop an appropriate engineering solution that would allow safe and reliable overhead transmission line construction in this area. It is the overlap and the interplay of these numerous constraints in this tight area that led LCRA TSC to determine that only underground construction would be appropriate at this location.⁹¹

In other words, if something "broke the logjam" created by the convergence of these factors, Link Y11 could be constructed in this general vicinity. The Commission chose to "break this logjam" by relying on available record evidence to remove one of the constraints by, in essence, granting permission to LCRA TSC not to follow a strict "immediately parallel to I-10 route" in

⁸⁸ The ERCOT CREZ Transmission Plan assumed above-ground construction, LCRA TSC Exh. 7, Symank Dir. Test. at 17 (Record Section II (Exhibits), Binder 28).

⁸⁹ *Id.* at 35; LCRA TSC Ex. 14, Symank Reb. Test. at 35 Exh. CDS-10REB (Kimble County Airport Underground Estimate) (Record Section II (Exhibits), Binder 28).

⁹⁰ LCRA TSC Ex. 14, Symank Reb. Test. at 37-38, Record, Section II (Exhibits), Binder 28.

⁹¹ *Id.* at 38.

this area.⁹² The Commission ordered LCRA TSC to go south for a portion of Link Y11 to avoid the aviation obstruction problem and further ordered LCRA TSC to utilize its engineering expertise to solve the remaining engineering problems (related to flooding issues). This is based upon the principle recognized by LCRA TSC's aviation expert that a transmission line could be built further south than LCRA TSC's proposed Link Y11 and meet the aviation concerns of LCRA TSC, provided that aviation was the only concern.⁹³

The Commission had before it several maps which show information relevant to the City of Junction and the vicinity of Link Y11; these maps (excerpts of which are included as Attachment D to this Brief) allowed the Commission to assess the impact of any potential adjustment on land use and environmental factors.⁹⁴ An additional set of photographs, maps and diagrams depicted the engineering constraints in the vicinity more particularly.⁹⁵

Most importantly for this discussion, two exhibits provided by LCRA TSC's engineering rebuttal witness Mr. Curtis Symank showed the Commission in a visual way exactly what it could do. Mr. Symank's Exhibit CDS-7REB depicts a variety of factors, but is most significant here for illustrating the southern approach to the Kimble County Airport based on "FAA Design Surfaces" in vertical orange lines. As the vertical orange lines in the middle of the picture move "inward" (north toward the airstrip, in an upward direction on the page), they allow a *decreasing* level of permissible heights for an obstruction (such as a transmission line tower).⁹⁶ This top-down (plan) view of the southern approach can be compared with Mr. Symank's Exhibit CDS-8REB, which depicts in part the same information from a side (profile) view. Putting the two together, it is possible to determine in a three-dimensional way, for example, at the point labeled

⁹² As noted on page 9 of this Brief, Link Y11 and other nearby links were added specifically to parallel I-10.

⁹³ Cross-Examination of LCRA TSC Rebuttal Witness William Griffin, Record Part III, (Transcripts) Vol. P, Hearing on the Merits, Nov. 1, 2010, Vol. 7 at 1314-15.

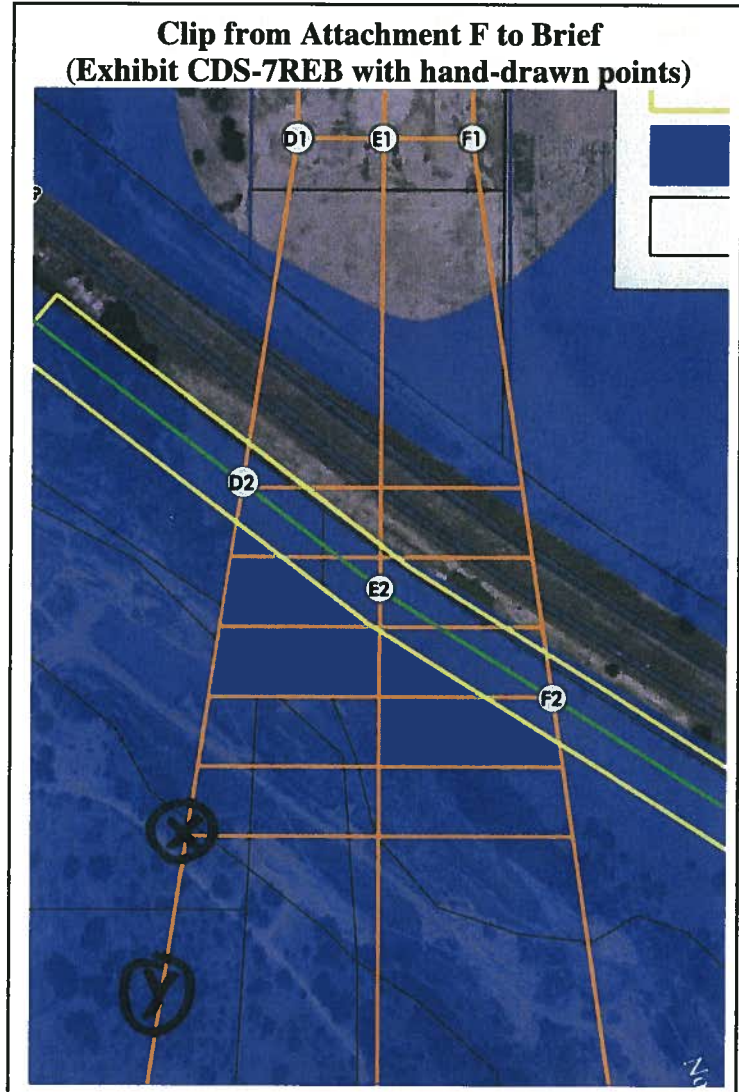
⁹⁴ Figures 3-1f and 6-1f, Environmental Constraints Map and Aerial Photography depicting Habitable Structures (Record Section II Binder No.18, Application Vol. 3 of 7) and Application Attachment 3, Sheet 16 of 28 (Record Section II (Exhibits), Binder No. 21, Application Vol. 6 of 7).

⁹⁵ LCRA TSC Ex. 14, Symank Rebuttal, Exhibits CDS-5REB, 7REB, and 8REB (Record Section II, Binder 28). Copies of these Exhibits are found in Attachment E to this Brief.

⁹⁶ Additional copies of portions of Exhibits CDS-7REB and CDS-8REB are found as Attachment F to this Brief and contains additional marks as explained in subsequent text and footnotes. The intersecting horizontal orange lines on Exh. CDS-7REB depict a grid of between 1000 and 2000 feet from a point known as "0 feet from the primary surface," a point of measurement relevant under FAA regulations considering airspace obstructions. Each intersection point of the orange lines represents 200 additional feet away from the primary surface and is relevant to the height a vertical structure may intrude into the air, when the level of ground altitude is also taken into account at that location.

“D2” on CDS-7REB, a transmission structure taller than 40 feet would exceed the published “Obstacle Slope” at that location, according to Exhibit CDS-8REB.⁹⁷

LCRA TSC’s “safety” concern was in not violating the existing “Obstacle Slope” south of the airport by creating a new obstruction at the Kimble County Airport’s south end.⁹⁸ Even more disruptive, violating the existing “Obstacle Slope” would violate City of Junction airspace easements associated with the airport, requiring condemnation of the easements.⁹⁹ However, by reading Exhibits CDS-7REB and CDS-8REB south and away from the airport (downward on the page) and following the vertical orange line (or rising lines on CDS-8REB) “outward,” a viewer may determine (from both a plan and profile view) that a potential obstruction relevant to the “safety” concern could be progressively *taller* as it was located further south (downward on the page) from the airport. For example, a transmission tower



⁹⁷ See Brief Attachment E, copy of CDS-8REB.

⁹⁸ LCRA TSC Ex. 14, Symank Rebuttal at 37. (Record, Section II (Exhibits), Binder 28). Tr. 1216-17, and 1462, Hearing on the Merits, Vols. 7 and 8, Nov. 1 and 2, 2010; Record, Section III (Transcripts) Vols. P and Q. As background, it is appropriate to recognize that FAA Regulations found at 14 CFR Part 77 require certain minimum actions by LCRA TSC, namely, notice to the FAA of proposals to build vertical structures that may exceed certain height/distance ratios in proximity to FAA registered airports. In turn, the FAA makes determinations about such construction, but may not prohibit construction. Several types of aviation approach “surfaces” (ratios) are relevant to and arise from part 77, including “Horizontal” and “Approach” surfaces. Included among these is an “Obstacle” surface or “Published Slope to Obstacle,” a ratio that recognizes a height/distance ratio to existing obstructions in approaching an airfield. LCRA TSC Ex. 15, Griffin Rebuttal at 10 (Record, Section II (Exhibits), Binder 28); Tr. 1287-88. Hrng on the Merits, Nov. 1, 2010, Vol. 8, Record Section III (Transcript) Vol. Q. In this location, the existing “obstruction” establishing the height/distance ratio is a stand of trees approximately 1560 feet from the south end of the runway, LCRA TSC Ex. 15, Griffin Rebuttal at Exh. WGG-2R. (Record, Section II (Exhibits), Binder 28).

⁹⁹ Record Part III, (Transcript) Vol. Q, Hearing on the Merits, Nov. 2, 2010, Vol. 8 at 1463.

located at the point where counsel has handwritten and encircled “X” shown on the copies of CDS-7REB and CDS-8REB as Attachments F to the Brief could be as much as 75 feet in height before it exceeded the published “Obstacle Slope” at that loca-

tion.¹⁰⁰ As a second example, a transmission tower located at the point where counsel has handwritten and encircled “Y” could be as much as 90 feet in height before it exceeded the “Obstacle Slope.”¹⁰¹

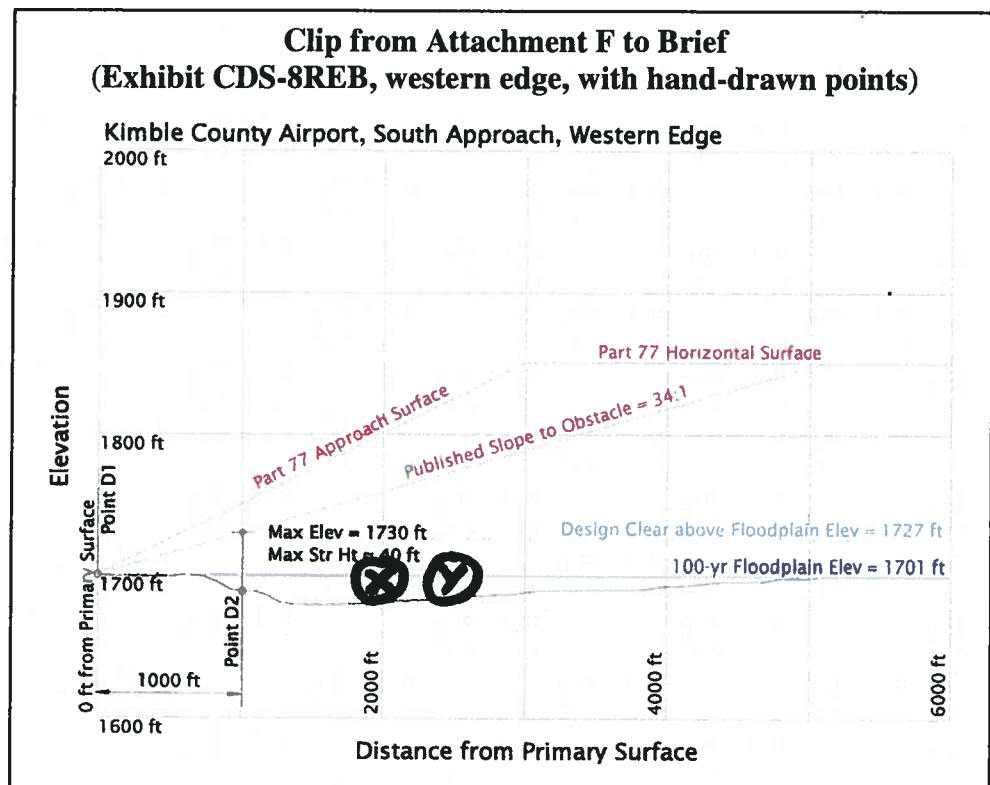
The Commission thus had before it evidence to deduce a distance-related solution to LCRA TSC’s demonstrated and expressed safety concern. By simply viewing the picture, applying the numbers and ratios available from Exhibits CDS-7REB and 8REB, and using the scale of distances from those same exhibits, the Commission could conclude that it was feasible to “move link Y11” “south” and have it constructed in a taller configuration by LCRA TSC without violating the “safe[ty]” concern expressed by LCRA TSC’s engineering witness in his testimony.¹⁰² As stated in Finding of Fact 118a:

Link Y11, when moved to the southern limit of noticed property owners, can be built *safely* and reliably at a reasonable cost above-ground. (emphasis added)

¹⁰⁰ At a published “Obstacle Slope” for this airport of 34:1, the height of an object could rise roughly six feet for every 200 feet farther away from the airstrip. One would also need to account for changes in the ground elevation (as shown on Exh. CDS-8REB), which if lower (as at point X) would allow for additional object height without penetrating the existing “Obstacle Slope.” Hence, a structure height of roughly 75 feet at “X”.

¹⁰¹ See previous footnote.

¹⁰² Creating a new obstacle slope, *see* fns. 98 and 100 above.



Of course, the analysis by the Commission of the available evidence did not and could not end with the “safety” prong. LCRA TSC’s project must be operated in a “reliable” manner; thus, it was not simply enough for the Commission to determine that the proposed Link Y11 could be adjusted further south for aviation safety purposes. In other words, 40-foot or even 90-foot tall structures were less than useful if there were further impediments to “reliable” operation. Applying LCRA TSC’s expert testimony that individual engineering issues could be solved if some issues were removed,¹⁰³ one can see that there is evidence in the record to support the finding that Link Y11 could and *would need to* be located further south for a “reliable” configuration for the transmission line.

The “reliability” concern relates to potential flood-related issues, and has two dimensions. The first dimension relates to the anticipated future erosion along the north bank of the Llano River and its potential to affect the transmission line if it were built in the constrained area between the river and I-10.¹⁰⁴ The second dimension of the flooding concern is Mr. Symank’s analysis of the ground elevation and expected water height at particular locations.¹⁰⁵ This is significant because if water rises to certain heights above ground during flooding events, overhead electrical wire “conductors” (wire) hanging down from towers may come too close to floodwaters—resulting in the need to “shut down the line” (stop the flow of electricity) to avoid injuries and physical damage to property.¹⁰⁶ If not constrained for maximum tower height (by something such as aviation concerns), LCRA TSC can deal with this concern, and has done so in the past in floodplains.¹⁰⁷ The “reliability” concern was a simple one: to “safely” place the transmission line close to I-10 near the airport and overhead, structures would have lower “reliability” because they would be built on a bank where future erosion is expected and would have to be too low (because of aviation “safety” concerns) to allow an appropriate distance between floodwaters and the overhead wires.¹⁰⁸

Once again, the record evidence supports the Commission’s reciprocal conclusion about LCRA TSC’s reliability concerns. IF transmission line towers could be located away from the

¹⁰³ LCRA TSC rebuttal witness Symank’s “isolation” statement found in text *infra* at 19.

¹⁰⁴ LCRA TSC Exh. 14, Symank Reb. Test. at 37 (Record Section II (Exhibits), Binder 28).

¹⁰⁵ *Id.* at 37-38 (Record Section II (Exhibits), Binder 28).

¹⁰⁶ Tr. 522-24; 1188-91 Hearing on the Merits, Vols. 3 and 7, October 27 and November 1, 2010, Record Section III (Transcripts) Vols. L and P.

¹⁰⁷ Tr. 293; 1464, Hearing on the Merits, Vols. 2 and 8, October 26 and November 2, 2010, Record Section III (Transcript) Vol. P.

¹⁰⁸ Tr. 1208-10 Hearing on the Merits, Vol. 7, Nov. 1, 2010, Record Section III (Transcript) Vol. P.

eroding northern bank AND towers could be tall enough to provide the needed clearance between the wires and the water level, Link Y11 could be adjusted for “reliability” to a different (more southerly) location that would also satisfy “safety.” Mr. Symank’s Exhibits CDS-7REB and 8REB show that a location south of the initially-conceived location for Link Y11 moves the proposed transmission line towers to the southern side and provides a height allowing for “Design clear[ance] above Floodplain” while allowing for a height underneath the “Obstacle Slope.”¹⁰⁹ Using the same maps, pictures and diagrams previously referenced, evidence shows that structure heights can be tall enough at more southerly locations than along I-10 to keep the conductors far enough above water in a flood to avoid affecting operations. For example, at Point “Y”, a transmission line structure could be 90 feet tall outside the “floodway” and still be under the “Obstacle Slope.” At 90 feet in height, the towers would have much more than the 37-38 feet of minimum clearance necessary between the “Floodplain Elev[ation]” and the conductors so as to avoid contact between the conductors and floodwaters.¹¹⁰ Thus, the evidence shows that both dimensions of “reliability” can be achieved by “mov[ing] link Y11” “south” “using overhead construction” as found in Finding of Fact No. 118a and further implemented in Finding of Fact No. 160 and Ordering Paragraph No. 2.

The final element supporting the Commission’s Order to adjust Link Y11 south in order to allow it to be constructed involves the ability to move south “while still affecting only noticed landowners.” Plaintiffs do not dispute that record evidence supports the Commission’s ability to order LCRA TSC do so.¹¹¹ Nor do they dispute the Commission’s finding that such a move would save \$54 million in the cost of underground construction, thereby substantially enhancing the desirability of this routing option.

Junction’s present claim suffers from at least two major legal infirmities,¹¹² but a more basic principle settles this matter in favor of the Commission’s Order: The Commission inferred

¹⁰⁹ *Id.*; LCRA TSC Ex. 14, Symank Rebuttal, Exhibit CDS-7REB, 8REB, and 9REB; (Record Section II Binder 28).

¹¹⁰ Tr. 1208-10. Hearing on the Merits, Vols. 3 and 7, October 27 and November 1, 2010, Record Section III (Transcripts) Vols. L and P.

¹¹¹ Plaintiffs’ Brief at 12 concedes that the modification will be located only within the noticed corridor.

¹¹² First, the Commission’s action is within the noticed limits of the Commission’s jurisdiction. *See* fns.12 and 60-62 above and accompanying text. Second, because Junction did not appear and participate at the hearing, Junction made no attempt to provide any evidence, even though (1) parties were asserting through testimony filed a month in advance of the hearing that Link Y11 could be adjusted to the south (Clear View Alliance Ex. 7, McIlwain Testimony, (filed September 28, 2010), Record Section II Exhibits, Binder 12) and were litigating at hearing the possibility of such an adjustment, and (2) Junction was explicitly on notice that route adjustments might occur through the contested case process. Such a failure results in a waiver of its arguments. *Hufo Oils v. Railroad Comm’n.*, 717

by the lack of participation at the evidentiary hearing that Junction did not have evidence adverse to the potential modification of the portion of Link Y11 in the area at issue. Since Junction was on notice of the potential modification of links, this was a permissible inference. With no evidentiary basis weighing against an adjustment of Link Y11 to the south, and ample evidence indicating that a move to the south provided safety and reliability benefits at a lower cost than underground construction, the Commission could provide for a link adjustment to the south on noticed landowners.

To summarize, the Commission had evidence before it that enabled it to make conclusions that an adjustment to the south for Link Y11 would achieve safety and reliability benefits, provide for lower costs, could be done on noticed landowners and was not otherwise objectionable. The City of Junction provided no evidentiary basis during the hearing process to suggest otherwise.

REPLY POINT NO. 2

THE COMMISSION'S ORDER MEETS THE REQUIREMENTS OF 9 TEX. GOV'T CODE ANN. § 2003.049 TO THE EXTENT MODIFICATIONS WERE MADE TO THE SOAH PROPOSAL FOR DECISION

A. Plaintiffs Attempt to Impose the Incorrect Legal Standard and Thereby Ignore Controlling Authority and Fail to Recognize Commission Authority

Prior to addressing the substance of Plaintiffs' arguments, a significant error in the claimed legal standard must be addressed. Plaintiffs argue that the Commission's changes to the SOAH Proposal for Decision ("PFD") are controlled by 9 TEX. GOV'T CODE ANN. § 2001.058(e) (West 2008 and Supp. 2010).¹¹³ This starting point leads to a series of erroneous arguments discussing that section and conclusions purportedly based on its applicability.¹¹⁴ However, the proper legal standard applicable to PUC matters is found at 9 TEX. GOV'T CODE ANN. § 2003.049 (Brief Attachment G). The relevant portions, sections (g) and (h), state:

(g) Notwithstanding Section 2001.058, the commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:

S.W. 2d 405, 409 (Tex. App. Austin –1986, writ denied.) (party cannot remain silent, taking a chance on outcome, and complain on rehearing).

¹¹³ Plaintiffs' Brief at 16.

¹¹⁴ *Id.* at 16 *et. seq.*

- (1) determines that the administrative law judge:
 - (A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or
 - (B) issued a finding of fact that is not supported by a preponderance of the evidence; or
 - (2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.
- (h) The commission shall state in writing the specific reason and legal basis for its determination under Subsection (g).

The difference is not one of form over substance. Controlling legal authority has found that, as a result of the different statutory provisions, there is a different intent to § 2003.049 and that “the language of § 2001.058 and the authorities discussing it are not relevant to the proper interpretation of section 2003.049(g).”¹¹⁵ *Further, the language of §2003.049(g) “allows the Commission to assume an original fact-finding role.”*¹¹⁶ Plaintiffs’ attempt to garble the distinctions between the two statutory provisions leads to a severe error in analysis. The Commission’s role is not “akin to an appellate court,”¹¹⁷ and it is utterly false to claim that it is. The Third Court in *Southwestern* has found:

Allowing the Commission more control over the ultimate disposition of its cases makes sense in the public utility arena. Public utility matters are typically complex. They often involve objective evidence that is more conducive to review on the record than evidence such as live witness testimony, which is subject to credibility concerns. Based on these observations and, most importantly, the language of the statute, we hold section 2003.049(g) allows the Commission to reevaluate the evidence admitted at a SOAH hearing to determine whether the ALJ’s findings are supported by a preponderance of the evidence. *In other words, we hold that section 2003.049(g) allows the Commission to substitute its judgment for the ALJ’s on questions of fact.*¹¹⁸ (emphasis added)

The Commission’s rule implementing § 2003.049(g) concerning modification of a PFD tracks the statutory language and is manifestly not like those of other agencies, despite Plaintiffs’ attempt to shoehorn the Commission’s rule into a different legal standard.¹¹⁹ The attempt to

¹¹⁵ *Southwestern Public Service Company v. Public Utility Comm’n of Texas*, 962 S.W. 2d 207, 212 (Tex. App. – Austin 1998, rev. denied.)

¹¹⁶ *Id.* at 213.

¹¹⁷ Plaintiffs’ Brief at 18.

¹¹⁸ *Southwestern*, 962 S.W. 2d at 214.

¹¹⁹ The Commission’s Procedural Rule 16 T.A.C. § 22.262(a), cited at page 19 of Plaintiffs’ Brief, clearly tracks § 2003.049(g) of the Gov’t Code and does not resemble the language discussed in the other agency’s rule given as an example at fn. 79, page 18 of Plaintiffs’ Brief.

gloss over these differences simply perpetuates a misleading legal theory that the Commission's fact-finding discretion is somehow limited. It is not.

Plaintiffs' attempt to argue an erroneous legal standard truly distorts a standard for proper legal review when it claims that the Commission's action in the Order of January 24, 2011 violates its own rules by failing to state "a single one of the required explanations" for changes in findings.¹²⁰ Failing to acknowledge the broad authority of the Commission, particularly to change Findings of Fact, Plaintiffs seem to complain about a lack of "magic words" accompanying or preceding the Commission's explanation of its modifications to the SOAH PFD. But the inclusion of "magic words" is not the appropriate legal standard when considering the Commission's broad discretion under Section 2003.049(g)&(h) in light of other applicable law. Essentially, the question is whether the Commission's action can be explained and understood in light of the Commission's explanation, a comparison between the SOAH PFD and the Order, and whether substantial evidence supports the Commission's findings as changed.

The courts have made clear that it is inappropriate to apply an overly technical "explanation" standard to the Commission's decisions to act under its authority in 9 TEX. GOV'T CODE §2003.049(g). In *Reliant Energy*,¹²¹ the Third Court reviewed several instances of challenges to alleged inadequate explanations for modifications to findings. The *Reliant* court rejected one modification based on the state of the evidence involved, but affirmed the Commission's actions on the remaining modifications.¹²² With respect to one of those points affirming the Commission's modification actions, the court (1) noted the Commission's explanation, (2) considered the evidence discussed in the Commission's appellate brief, and (3) found that the Commission "plainly rejected" the ALJ's recommendations for the explained reason despite the appellants insistence in their reply brief that the explanation was inadequate.¹²³ In both this instance and in another instance where the *Reliant* court affirmed the Commission's "modification decision" un-

¹²⁰ Plaintiffs' Brief at 20.

¹²¹ *Reliant Energy, Inc. v. Public Utility Comm'n of Texas*, 153 S.W.3d 174 (Tex. App. – Austin 2004, pet. den.).

¹²² See *Reliant*, 153 S.W.3d at 189-192, 206-209. In the *Reliant* court's instance of rejecting the Commission's modification explanation, the court held in effect that the evidence relied on for the modification could not constitute "substantial evidence" as it contained its own "death wound" because the evidence had been modified by its proponent and therefore could not support the proposition adopted by the modification. *Reliant*, 153 S.W.3d at 191-192. For the concept that evidence may carry its own "death wound" because of its inadequacies, see *Fuel Distributors, Inc. v. Railroad Comm'n of Texas*, 727 S.W.2d 56, 61 (Tex. App. – Austin 1987, writ ref'd n.r.e.).

¹²³ *Reliant* 153 S.W.3d at 206-209.

der § 2003.049, the court noted both the explanation and the presence of substantial evidence in support of the Commission's action.¹²⁴

The *Reliant* court's holdings suggest that when a "plain reading" of the Commission's modifications can be discerned from the Commission's Order, the substantial evidence underlying its actions supports the modification, and the appellate briefs explain the context of the Order and evidence, the modification explanations are sufficient. This is a reasonable interpretation, given that the standard of review of Commission Orders avoids hypertechnicality and recognized that the Commission has been given broad authority in the frequently complex matters of public utility regulation.¹²⁵ This sensible standard of review also recognizes that the Commission is not explaining modifications implicating the credibility of live witnesses it did not see but is making decisions about the meaning and significance of evidence in an extensive written record where all parties have had the opportunity to muster facts and analysis to support their competing positions.¹²⁶ Requiring "magic words" or detailed explanations of an unknown level to meet some subjective expectation of a party simply does not serve the purposes of regulation that the PUC has been charged with, nor the purpose of § 2003.049(g).¹²⁷

B. Plaintiffs Have Waived Their Claim In Point of Error No. 2 for Failure to Include the Claim in the Motion for Rehearing.

The courts have required that claims of the failure by the Commission to properly articulate a basis for changes to a PFD must be included in a Motion for Rehearing or they are waived.¹²⁸ Plaintiffs' Motion for Rehearing¹²⁹ at page 18 shows that they briefly mention the alleged failure to articulate a reason for changes, but do so by reciting an incorrect legal standard (*see* Section A above) as part of a vague legal claim. The remainder of the Motion argues for a lack of substantial evidence for certain findings, not for the failure to provide an explanation of changes. In light of the applicable legal standards shown in Section A above, the Motion for Rehearing did not "adequately provide the agency notice of the alleged error so that it could correct it."¹³⁰ When Plaintiffs claimed that the "Commission's rules...limit the ability of the Commis-

¹²⁴ *Id.*

¹²⁵ *See Hammack*, 131 S.W.3d at 723-724.

¹²⁶ *See id.*, adopting this principle in electric transmission line routing cases.

¹²⁷ The purpose of such a procedural requirement in this context is similar to that of those requiring findings of fact, that is to be able to illustrate what the agency decided and why.

¹²⁸ *Hammack*, 131 S.W. 3d at 732.

¹²⁹ Plaintiffs' Brief, Attachment A.

¹³⁰ *Id.*

sion to change a finding of fact....”¹³¹ the Commission’s (proper) response was stunned silence because it was being asked to explain itself under a standard that did not apply.¹³² If the standard does not apply, the Commission was not properly apprised of its alleged error. Since parties are charged with knowledge of applicable law, Plaintiffs’ arguments should be deemed waived; Plaintiffs should not be allowed to perpetuate a claim of error by reference to the wrong standard.

C. The Commission Sufficiently Articulated the Reasons for Its Changes to Findings of Fact Under the Appropriate Legal Standard

1. The Junction Area/Link Y11 Findings

The Commission explains that it ordered a portion of Link Y11 relocated south of its “as filed” location close to I-10.¹³³ It did so because it found that Link Y11 could be constructed using overhead construction safely and reliably to the south on noticed landowners in the vicinity of the airport at much lower cost,¹³⁴ based on record evidence (discussed at Reply Point 1.C. above) that showed this could be accomplished by a move of no more than a few thousand feet. The Commission obviously substituted its judgment for that of the ALJs on the evidence related to the ability to construct Link Y11 further south, both by (1) limiting PFD findings 113-114 and 116-117 to Link Y11 “as filed,” and (2) deleting PFD Finding 115.¹³⁵ By comparing the PFD with the Order, it is clear that the Commission exercised its authority to re-evaluate evidence to limit the scope of four findings (113-114, 116-117), substitute its judgment and replace one finding (115), add one finding (118a) and delete three findings (111, 112, and 118) it did not rely on in its decision. All four actions fall within the Commission’s ability to evaluate evidence on its own accord under Section 2003.049(g) of the GOV’T CODE; the latter is also covered by case law

¹³¹ Plaintiffs’ Brief at 3.

¹³² See Section A above.

¹³³ Order, January 24, 2011 at 2.

¹³⁴ *Id.* at Findings 160, 118a, and 120.

¹³⁵ The deletion of Finding 115 is supported by substantial evidence. Maps and photography contained in Brief Exhibit D and E demonstrate that an incremental adjustment of Link Y11 to the south would not necessarily place the transmission line within the City of Junction’s street grid. Further, the area south of the filed configuration of Link Y11 perpendicular to the north-south runway of the Kimble County airport is floodplain, which limits the type and amount of city development. See LCRA TSC Exh. 14, Symank Rebuttal Test., Ex CDS-7REB (floodplain shown in blue), Brief Attachment E (found in Record Section II (Exhibits), Binder 28. The Commission could reasonably conclude that while Link Y11 would be in the formal city limits of Junction, it would not encroach on the City proper.

holding that the Commission need not state facts it did not rely on.¹³⁶ The Commission simply “found facts” differently under a “plain meaning” reading of the Order. Under the Commission’s discretion and appropriate legal test found in TEX GOV’T CODE § 2003.049(g)&(h), the explanation is sufficient.

2. The Remaining I-10/Kerrville Findings

Plaintiffs attack the main rationale for the Commission’s changes as demonstrating that “the Commission essentially stepped into the shoes of the ALJs...”¹³⁷ There is no “essentially” about the Commission’s action: that is exactly what the Commission did *and what it was legally entitled to do*. There is no question that there is a considerable amount of evidence discussed in the PFD that supports the use of I-10 as an alternative route.¹³⁸ With evidence supporting many different outcomes, the Commission deemed certain evidence the most credible (“the Commission finds...”)¹³⁹ and then exercised its legislatively-given discretion¹⁴⁰ to determine both the meaning and relative weight to be given to a variety of considerations in PURA § 37.056 and Commission Substantive Rule 25.101(b)(3)(B). In this proceeding, supported by a large body of evidence, the Commission determined that the factor of “parallel[ing] existing compatible rights of way”¹⁴¹ was of great, if not paramount, importance. Further, the Commission determined in the context of this proceeding that a four-lane interstate highway with existing development that had already materially fragmented the landscape was more compatible with a transmission line than other ROW that might be deemed compatible in other circumstances (such as pipelines).¹⁴² The claim that the Commission had some “predetermined result” in mind is wrong because there was evidence to support a range of outcomes, including the Commission’s result.¹⁴³ As the PFD acknowledges, a route that continues “along I-10 through Kerr-

¹³⁶ *State Banking Board v. Valley National Bank*, 604 S.W. 2d 415, 219 (Tex. Civ. App. – Austin 1980, writ ref’d n.r.e.)

¹³⁷ Plaintiffs’ Brief at 21.

¹³⁸ See PFD at fns. 55-57, 121-127, 174-181, 187-188 & 243 and associated text.

¹³⁹ Order at 2.

¹⁴⁰ See *Public Utility Comm’n of Texas v. Texland Electric Co.*, 701 S.W. 2d 261, 266-67 (Tex. App – Austin 1985, writ ref’d n.r.e.).

¹⁴¹ 16 T.A.C. § 25.101(b)(3)(B)(ii).

¹⁴² See Order at 2 and Finding of Fact 52a and compare with PFD discussion at 24 & 75 (acknowledging pipeline paralleling potential through Tierra Linda subdivision but acknowledging concerns with doing so).

¹⁴³ In passing, this is not the first time the complaining parties have made a similar accusation. Kerr County accused not the Commission, but the ALJs, of attempting after-the-fact justification, claiming “[the ALJs] made a decision to go with the southern routes because of that noise, and then proceeded to try and find a way to justify it.” Jan. 13, 2011 Open Meeting Tr. at 70.

ville...carries the environmental and aesthetic advantages of paralleling I-10 for a greater length.¹⁴⁴ The Commission obviously weighed aesthetics heavily in its determination as it added Finding of Fact 52a to its aesthetics findings:

The Commission finds that in this study area, following I-10 along MK63 is a more compatible right-of-way for paralleling purposes than the alternative paralleling opportunities available.

which was preceded immediately by incorporating the ALJ's finding on I-10's aesthetics:

I-10 is a means of transportation across the state, where aesthetically pleasing views are incidental. Travelers and anyone in the proximity of I-10 in the project area will see commercial development including gas stations, convenience stores, chain and fast-food restaurants, strip malls, traffic – including heavy tractor-trailers, car lots, power lines, roadways, -- including feeder roads, and all of the development associated with small towns, larger municipalities, and cities like San Antonio. It is far more likely that a 345-kV line will be lost in the visual foreground along I-10 than if it were run along a central or northern route through what is undoubtedly the aesthetically pleasing and relatively undeveloped Texas Hill Country.¹⁴⁵

Any claim of “predetermined results” is quickly dispatched by the presence of evidence in the record and the acknowledgment by the *ALJs* that a “promising alternative” to a route that ran north of Kerrville was one that was much the same route through Kerrville as the one the Commission adopted.¹⁴⁶

In summary, the Commission's process of making changes to the PFD is explained by the evidence present in the case, the open and frank discussion of the merits of various alternative routes in the PFD, and the Commission's exercise of its statutory authority. In this light, the Commission's explanation that it chose certain prevailing factors as a basis for its changes is sufficient to meet the standards of TEX GOV'T CODE § 2003.049(g).

¹⁴⁴ PFD at 3.

¹⁴⁵ See PFD discussion at 37 and evidence discussed therein.

¹⁴⁶ PFD at 3. MK62 uses the same links through Kerrville and Kerr County, as does MK63.

REPLY POINT NO. 3

PLAINTIFFS MISREPRESENT THE ORDER WHEN THEY CLAIM THAT THE COMMISSION DISRE- GARDED ITS POLICY OF PRUDENT AVOIDANCE

A. Under Proper Application of the Arbitrary and Capricious and the Abuse of Discretion Standards and in Light of the Commission's Required Decision-making Process Under PURA § 37.056, the Commission Did Not Disregard Its Policy of Prudent Avoidance.

The Commission's task is to evaluate and determine the meaning of the relevant criteria under PURA § 37.056(c) (Brief Attachment H) and P.U.C. SUBST. R. § 25.101(b)(3)(B) (Brief Attachment I), while reviewing the evidence on those criteria and balancing them on case-by-case basis to arrive at reasoned decision.¹⁴⁷ For a Commission decision to be arbitrary and capricious, the decision must have failed to evaluate relevant criteria, considered irrelevant criteria, or must have reached an unreasonable result after weighing relevant factors.¹⁴⁸ An examination of what the Commission did demonstrates that the Plaintiffs' arguments are without basis and simply wrong.

It is useful to begin with an understanding of what the policy of "prudent avoidance" is and what it is not. The Commission's policy involves "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."¹⁴⁹ It does *not* require that the Commission select the route with a lower number of habitable structures in proximity to the line than another route, nor does it require the Commission to select a route with some intervenor-imposed, *ad hoc* ratio-of-costs/habitable-structure-impact standard. Yet this is what Plaintiffs' Point of Error No. 3 claims.¹⁵⁰

The Commission's policy of prudent avoidance is best placed within context when the Commission's electric transmission line routing rule is considered. The Commission's Rule states:

- (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 mod-

¹⁴⁷ See *Hammack*, 131 S.W.3d at 724, citing *Texland* 701 S.W.2d at 266.

¹⁴⁸ *Reliant Energy, Inc. v. Public Utility Comm'n*, 62 S.W.3d 833 (Tex. App. -- Austin 2001, no pet.).

¹⁴⁹ PUC SUBST. R. § 25.101(a)(4). It is important to note that the Commission found in FOF 126 that *all* of LCRA TSC's routes met the test of prudent avoidance.

¹⁵⁰ Plaintiffs' Brief at 22-24.

erate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's preferred and alternate routes [absent certain types of agreement]:

- (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel existing compatible rights-of-way;
- (iii) whether the routes parallel property lines or other natural or cultural features; and
- (iv) whether the routes conform with the policy of prudent avoidance.¹⁵¹

As is clear from the structure and content of the rule, a multitude of criteria must be considered and in no place does the Commission indicate that “the policy of prudent avoidance” prevails or predominates over any other criteria in all or even *any* instances. The first sentence incorporates statutory criteria and other more “particular factors” the Commission may set forth.¹⁵² The second sentence continues with four additional factors, only one of which is prudent avoidance.

The interplay of these routing factors was addressed clearly by the *Dunn* court:

The plain language of the rule grants the PUC authority to consider and weigh a variety of factors—engineering constraints, costs, grid reliability, and security, along with the criteria in PURA section 37.056—in addition to the use of existing rights-of-way in determining the most reasonable route for a transmission line. As with environmental integrity, no one factor controls or is dispositive. The PUC is expressly directed to consider the various factors and their impact on landowners *to the extent reasonable*.¹⁵³ [Footnote omitted; emphasis in original].

B. The Commission’s Decision on Prudent Avoidance Meets Legal Standards.

The Commission’s determination regarding prudent avoidance was not arbitrary and capricious because it *did* consider prudent avoidance as a relevant factor, it just *did not consider it to be a controlling factor*. What the Commission has determined concerning prudent avoidance in this case is that *Route MK63 at its cost* represents a reasonable investment of money and effort to limit exposure to electric and magnetic fields (FOFs 125-126). This means that the Commission found that the route has sufficient cost expenditures within the route itself to limit exposures.¹⁵⁴ Having satisfied itself that this policy was honored (notably with respect to all

¹⁵¹ 16 TEX. ADMIN. CODE §25.101(b)(3)(B).

¹⁵² See *Texland* 701 S.W.2d at 267.

¹⁵³ *Dunn*, 246 S.W.3d at 795.

¹⁵⁴ In FOF 126 both the Commission and the ALJs found that *all* routes “reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields (EMF).” PFD at 105; Order at 18. Plaintiffs are

routes),¹⁵⁵ the Commission then chose to weigh environmental integrity, community values, aesthetics and other factors more heavily than estimated costs and numbers of proximate habitable structures in choosing a route. The Plaintiffs have no support for their false assertion that it is necessary for purposes of honoring the policy of prudent avoidance that the Commission must pick a route with fewer habitable structures or some route where increased costs result in decreased impacts to habitable structures.¹⁵⁶ Every study area and route is factually different; the prudent avoidance policy as applied in this case in FOFs 125 and 126 recognizes that a particular route may do its best to limit exposures but still affect a large number of habitable structures and have higher (relative) costs. It does not follow that such recognition must outweigh other considerations such as environmental integrity or other routing criteria. Indeed, to require the Commission to do so would elevate one factor over another because of an intervenor's position in one case – a result contrary to the Commission's discretion in considering and weighing various factors and the agency's duty to evaluate each case on its own merits.

Similarly, it cannot be said that the Commission abused its discretion. The Plaintiffs' claim that the Commission's Order reaches a completely unreasonable result after weighing relevant factors conveniently *leaves out* the heavy weight that Commission gave to other relevant factors when it weighed them against issues of presence of habitable structures and costs. Contrary to Plaintiffs' claims and as explained previously, the Commission decided that other factors led it to a different result than the one Plaintiffs advocate. The evidence indicating the depth, extent and importance of other factors such as environmental integrity, community values and aesthetics in this study area shows that the Commission could properly weigh them to reach the result it did.¹⁵⁷ Such questions of proper balance are not the subject of second guessing on review.

effectively asking the Commission to alter this finding by the ALJs, the same thing they take issue with in other Points of Error.

¹⁵⁵ PFD at 74 and FOF 125.

¹⁵⁶ Plaintiffs' Brief at 23 ("The Commission had a *duty*...to select a route that minimized impacts to habitable structures...") (emphasis added). Plaintiffs' assertion is too limiting and, ultimately, absurd. Under Plaintiffs' analysis an interior route that was cheaper and affected fewer habitable structures would have to be selected even if that route affected more environmental factors, created new fragmentation of undisturbed land, and created the most deleterious aesthetic impacts. Clearly, such a result is not mandated by the policy of prudent avoidance which is only one of several competing routing criteria which is the Commission's job – not the Plaintiffs' -- to balance in any given case.

¹⁵⁷ See PFD at 17-25, 32-38 and 42-65.

C. Plaintiff's Evidentiary Argument on Prudent Avoidance Fails.

Plaintiffs' evidentiary claim is simply a rehash of its arguments that Route MK63 was not part of the Application and therefore no evidence supports it. Here, it must be remembered that the Kerrville-area links about which Plaintiffs' complain were part of Routes MK32 and MK33, and Kerrville had its chance to prove its case.¹⁵⁸ Kerrville proffered evidence and its arguments at the hearing that *Route MK63* did not comply with the policy of prudent avoidance,¹⁵⁹ but both the ALJs and the Commission found otherwise.¹⁶⁰ Kerrville simply lost its argument on the merits at hearing, and Plaintiffs must now resort to attempting to remedy its loss by alleging "no evidence." Such a position provides no basis for reversing the Order.

In addition to other evidence on the subject (that will no doubt be cited by other intervenors), LCRA TSC introduced evidence on prudent avoidance. LCRA TSC's environmental consultant Mr. Reid testified that prudent avoidance did not reflect a policy of avoiding habitable structures at all costs:

If habitable structures exist within the proposed right-of-way of the final route approved by the Commission, people may be relocated or the line re-routed away from habitable structures, depending on costs and the Commission's directives, in order to comply with the Policy of Prudent Avoidance.¹⁶¹

Both Mr. Reid and LCRA TSC's Senior Regulatory Case Manager, Ms. Sara Morgenroth, testified that all of LCRA TSC's routes were consistent with the prudent avoidance policy in that they reflected reasonable investments of money and effort to limit exposure to electric and magnetic fields.¹⁶² Prudent avoidance is not simply a counting of habitable structures.¹⁶³ Based on this evidence alone, the PUC could have determined that (1) all LCRA TSC's routes met the "prudent avoidance" policy, (2) that some greater or lesser number of habitable structures did not control the Commission's choices under the prudent avoidance criterion, and (3) the fact that some habitable structure might be removed did not mean the prudent avoidance policy would be

¹⁵⁸ Route MK19 also has exactly the same links through Kerr County as the Commission's Modified Route MK63.

¹⁵⁹ Kerrville Initial Brief at 10, Record Section I Filings, Binder 7, Item 356. Apparently Plaintiffs' claim of Route MK63 not being part of the 60 routes explicitly set forth by LCRA TSC in its Application is not as big a problem in some contexts as others.

¹⁶⁰ The PFD and Order at Finding 126 found *all* routes met the prudent avoidance test.

¹⁶¹ LCRA TSC Ex. 9, Reid Testimony, Record, Section II (Exhibits), Binder 28.

¹⁶² *Id.* and LCRA TSC Ex. 2, Morgenroth Test. at 30, Record Section II (Exhibits), Binder 25.

¹⁶³ Hearing on the Merits Tr. Vol. 1 (Reid cross) at 167, Record Section III (Transcripts) at Vol. J.

violated.¹⁶⁴ The Commission acknowledged in Finding of Fact 124 in the Order that Route MK63 affected 134 habitable structures and found in Finding of Fact 125 that it nonetheless complied with prudent avoidance. Kerrville's perspective was simply rejected.

REPLY POINT NO. 4

PLAINTIFFS' CLAIM THAT THE COMMISSION ACTED ARBITRARILY AND CAPRICIOUSLY IN DIS- REGARDING COMMUNITY VALUES COMPLETELY IGNORES THE COMMISSION'S EXTENSIVE CON- SIDERATION OF THE ISSUE

A. The Plaintiffs' Arguments Ignore the Proper Legal Standard.

Plaintiffs' complaint that the Commission "failed to consider" community values boils down to two complaints that: (1) their particular perspective on community values was not adopted, and (2) their particular perspective on community values did not outweigh other factors. In fact, the Commission exercised its proper role in this case, determining the meaning of the community values factor in this proceeding and the weighing that consideration against others.¹⁶⁵

According to *Dunn*:

We will consider an administrative agency's decision to be arbitrary and capricious or an abuse of discretion if the agency reaches a completely unreasonable result after weighing the relevant factors established by the legislature. *See City of El Paso v. Public Util. Comm'n*, 883 S.W.2d 179, 185 (Tex. 1994).¹⁶⁶

As can be seen from the immense body of conflicting evidence and the resolution of the conflicts in that evidence, the Commission reached a reasonable result.

B. The Commission's Action Was Proper and Supported by the Evidence.

To read Plaintiffs' Point of Error No. 4, one might believe that little evidence was presented on the topic of community values in the hundreds of hearing exhibits from dozens of adverse parties and the seven days of hearing. In fact, the PFD reviewed for several pages the competing evidence and concepts of community values and recommended twelve Findings of

¹⁶⁴ Additionally, the Plaintiffs overlook the fact that prudent avoidance includes many techniques other than routing. For instance, the ALJs noted that simply by reducing the transmission line's right-of-way width from 140 feet to 100 feet, the number of habitable structures within the right-of-way could be reduced from 17 down to six. PFD at 74. LCRA TSC had offered to do exactly this. LCRA TSC Ex. 7, Symank Dir. Test. at 31, Record Section II (Exhibits) Binder 28.

¹⁶⁵ *Texland*, 701 S.W.2d at 261.

¹⁶⁶ *Dunn*, 246 S.W.3d at 791.

Fact.¹⁶⁷ Ultimately, the Commission found that there was conflicting evidence of community values (FOFs 22 and 23), gave greater weight to community values evidence favoring the paralleling of I-10 as it avoided and lowered impacts to the Texas Hill Country (FOFs 24 and 25), and resolved the conflicting perspectives in favor of Route MK63, which has substantial portions along I-10 (FOF 30). Thus, the Commission resolved the *evidentiary* conflict on the statutory criterion of “community values” in favor of following an existing highway corridor that has already fragmented the landscape to avoid further impact on the Texas Hill Country. As a matter of law it is presumed the Commission considered Plaintiffs’ arguments and evidence and rejected them.¹⁶⁸ For this reason and because the Commission is not required to comment on every aspect of the record nor is it required to state facts it rejected and did not rely on,¹⁶⁹ the Commission’s evidentiary decisions as to community values cannot be described as infirm or incorrect. Ample evidence supports the Commission’s decision to find that community values support avoiding the Texas Hill Country by utilizing the I-10 corridor.¹⁷⁰ The Commission cannot be said to have reached an unreasonable result.

The Plaintiffs’ arguments are further without basis when the second step is considered, the weighing and examination of relevant criteria. The Plaintiffs would have *their* perspective of community values become the controlling legal test for not utilizing Route MK63 when to do so would be contrary to the judicial decisions recognizing the Commission’s discretion. The Commission considered community values along with other relevant considerations, finding that:

- (1) Community values are best served by maximizing the paralleling of I-10 (FOFs 25 and 30),
- (2) The paralleling of existing ROW along I-10 is better than other paralleling opportunities (FOF 52a) despite the recognized aesthetic impacts (FOFs 48, 49 and 52),
- (3) Impact on environmental integrity was more favorable in this instance when routes had greater length parallel to I-10 than with routes with less length parallel to I-10, (FOFs 77, 79 and 102), and
- (4) Lower costs and fewer habitable structures of other routes were outweighed by MK63’s paralleling, especially since Route MK63 complied with the Commission’s prudent avoidance policy (FOFs 120-122 and 126-126).

¹⁶⁷ See PFD at 17-25 & 95.

¹⁶⁸ See *Gulf Oil Corp. v. Railroad Comm’n of Texas*, 660 S.W.2d 112, 124 (Tex. App. – Austin 1983, writ ref’d n.r.e) (presumption of consideration of arguments and evidence in such pleadings as exceptions).

¹⁶⁹ *Valley National Bank*, 604 S.W.2d at 419.

¹⁷⁰ See PFD at 18 *et. seq.*

The Plaintiffs' complaint that their perspective of their perceived community values has not been decisive is merely a complaint that they wanted the Commission to make a different decision. However, the choice between routes arrived at by weighing various factors is the Commission's duty and prerogative and has occurred within the legally accepted boundaries laid out by the courts.

C. Plaintiffs' Evidence Rehash Does Not Detract From the Commission's Result.

Not content with asking the Court to exceed the scope of review under the Government Code by substituting its judgment for that of the Commission, Plaintiffs also attempt to convince the Court of the merits of their hearing evidence. While this request is legally inappropriate, even an indulgence in this evidence examination undermines Plaintiffs' arbitrary and capricious claim. Such a review demonstrates the range of evidence the Commission had before it, and the fact that the Commission did not disregard community values.

The centerpiece of Plaintiffs' claim is that a tabulation of public open house comments (Plaintiffs' Brief, Attachment G) demonstrates "overwhelming community support for avoiding developed areas and habitable structures."¹⁷¹ But, Plaintiffs' tabulation is extremely misleading in its omission, as is demonstrated by Attachment J to the Brief. ("Revised Community Values Chart")¹⁷² When the "value" of "paralleling existing compatible right of way" is considered also (a "value" the Commission ultimately found extremely important), the result is more nuanced. In 21 separate open houses (or groups of respondents who did not attend open houses), the relevant questionnaires showed that "maximizing distance of transmission lines from residences" outranked "use or parallel other existing compatible ROW" only eleven times. The other ten times the reverse was true, showing that both competing community values were strongly held.¹⁷³ Even for Kerrville itself, the priorities shift between years.¹⁷⁴ As one source of information (and not a conclusive one, since transmission line routing decisions are not community votes), the open house survey data is mixed. Of course, Plaintiffs cannot even show that the survey data is (1) conclusive and controlling as to how to define "community values," or (2) that it was wholly ignored by the Commission. At best, Plaintiffs' proffer illustrates the reason for

¹⁷¹ Plaintiffs' Brief at 28-29.

¹⁷² In addition to expanding the data presented, the revised chart includes additional data contained in the evidentiary record and omitted by Plaintiffs'; it also corrects several apparent errors.

¹⁷³ See, for example, lines for "San Angelo 2009" and "Non-Open House 2010" in Attachment J.

¹⁷⁴ Compare "Kerrville 2009" with "Kerrville 2010" in Attachment J.

“substantial evidence” review: this evidence was required to be evaluated by the agency with expertise and given its due weight; the reviewing court’s role is not to “reweigh” such evidence.

Plaintiffs’ rehash of testimony about impact on Kerrville¹⁷⁵ demonstrates a different point: despite the impact on habitable structures and communities directly on I-10, the Commission exercised its discretion to find that “not cut[ting] a new path through the heart of the Hill Country” when “I-10 has already cut through the area”¹⁷⁶ was the most appropriate interpretation and conclusion about community values *in this case*, as is its prerogative under the holding in *Dunn, Hammack*, and *Texland*. Plaintiffs’ evidence was acknowledged,¹⁷⁷ considered, and found to be outweighed by other considerations. That proper conclusion should not be disturbed on appeal.

D. Plaintiffs’ Community Values Were Acknowledged.

Despite their claims, Plaintiffs’ “community values” were not ignored. Both Junction and the Kerrville area parties went on record with requesting single pole structures in their vicinity if their areas could not be avoided entirely.¹⁷⁸ In Ordering Paragraph No. 4, the Commission required:

4. LCRA shall use monopoles within the City of Kerrville and extending to the limits of its extraterritorial jurisdiction, and within the City of Junction and extending one mile beyond its municipal limits, as those cities’ boundaries exist as of January 20, 2011. LCRA shall work with both the cities of Junction and Kerrville and affected landowners within each of those cities to reach agreement on the material and type of structure used, as well as the spacing and height of the structures. Where the municipality and a landowner disagree as to these issues, the landowner’s views shall prevail over the municipality.

This accommodation reflects a recognition of secondary community values when primary community values in Junction and Kerrville were outweighed by other community values decisions.

¹⁷⁵ Plaintiffs’ Brief at 29-30.

¹⁷⁶ Finding 25, Order at 6.

¹⁷⁷ PFD at 22-23.

¹⁷⁸ See for example, Junction Statement of Position, Attachment H to Plaintiffs’ Brief, at 2. Indeed, through exco-riating the Commission for having spent hours listening to public comment at the Open Meeting of January 13 and 20, 2011, (including comment offered by both the Mayor of Kerrville and the Kerr County Judge), it is noteworthy that counsel for Plaintiffs made several requests of the Commissioners at the Open Meetings including a request for monopoles within the city limits and ETJ of the City of Kerrville. See Open Meeting Transcript January 20, 2011 at 77 (Attachment F to Plaintiffs’ Brief). As noted in text, counsel’s request was granted.

Such an accommodation for the benefit of the Plaintiffs must leave the reader baffled as to how the Commission could then be accused of “clearly disregard[ing] community values.”¹⁷⁹

V. Prayer

WHEREFORE, PREMISES CONSIDERED, LCRA TSC respectfully requests that the Judge, after review of the briefs and record in this case, deny the Plaintiffs’ appeal of PUC Docket No. 38354 and affirm in all respects the Commission’s Order in this case. LCRA TSC also requests all other relief to which it may show itself entitled.

¹⁷⁹ Plaintiffs’ Brief at 28.

Respectfully submitted,

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By: Fernando Rodriguez w/permission
Fernando Rodriguez

ATTORNEYS FOR LCRA TRANSMISSION
SERVICES CORPORATION

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Initial Response Brief was served by Certified Mail, Return Receipt Requested, on this the 17th day of June, 2011, to the counsel of record listed on the List of Parties on pages vii and viii of this brief.

Fernando Rodriguez w/permission
Fernando Rodriguez *FR*

List of Attachments

- A. LCRA TSC Notice Letter to Landowners, Application Attachment 6 (part); Record Section II (Exhibits) Binder 16.
- B. LCRA TSC Ex. 26, Hearing on the Merits; Record Section II (Exhibits), Binder 29
- C. Order of the Public Utility Commission, PUC Dkt. No. 38354 (January 24, 2011) and SOAH Proposal for Decision, PUC Dkt. No. 38354, SOAH Dkt No. 473-10-5546 (December 16, 2010)
- D. Excerpts of maps in Application related to vicinity of Link Y11, pages labeled w/notes to Application and Environmental Assessment, from Record Section II (Exhibits), Binders 18 & 21.
- E. LCRA TSC Ex. 14, Rebuttal Testimony of Curtis Symank, Exhibits CDS-5REB, -7REB, and -8REB; Record Section II (Exhibits) Binder 28.
- F. Additional copies of Exhibits CDS-7REB and -8REB with counsel's hand markings.
- G. 9 TEX. GOV'T CODE § 2003.049 (g) & (h)
- H. 1 TEX. UTILITIES CODE § 37.056, within portion of Util. Code referred to as Public Utility Regulatory Act or PURA
- I. 1 TEX. ADMINISTRATIVE CODE § 25.101 (b)(3)(B), Texas Public Utility Commission (PUC) Substantive Rules
- J. Revised Community Values Chart, based on Exhibit G to Plaintiffs' Brief and revisions from record evidence



LCRA TRANSMISSION SERVICES CORPORATION

July 28, 2010

Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for the Proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties, Texas

PUBLIC UTILITY COMMISSION OF TEXAS (PUC) DOCKET NO. 38354

Dear Landowner:

We want you to know LCRA Transmission Services Corporation (LCRA TSC) is requesting approval from the PUC to amend its Certificate of Convenience and Necessity (CCN) to construct two transmission line projects associated with the Competitive Renewable Energy Zone (CREZ) project and ordered by the PUC specifically as: 1) McCamey D to Kendall double-circuit 345-kV line and, 2) Kendall to Gillespie single-circuit, double-circuit capable 345-kV line.

The McCamey D to Kendall transmission line will connect the McCamey D Station (renamed Big Hill) located in northern Schleicher County to the existing Kendall Station located in western Kendall County, near Comfort, Texas. Depending on the transmission line route approved by the PUC, the McCamey D to Kendall transmission line may be located in portions of Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall counties. The Kendall to Gillespie transmission line will connect the existing Kendall Station to the expanded Gillespie Station, located in central Gillespie County. Depending on the transmission line route approved by the PUC, the Kendall to Gillespie transmission line may be located in portions of Gillespie, Kerr, and Kendall counties.

LCRA TSC presented information about these two projects at public open houses held in May 2009 and in February 2010. These projects are two of several projects intended to provide reliable and cost-effective delivery of power produced from wind generators located in CREZ areas of West Texas and the Panhandle to homes and businesses throughout the state. The estimated cost of the McCamey D to Kendall transmission project is approximately \$274.7 million. The estimated cost of the Kendall to Gillespie transmission project is approximately \$92.9 million.

Your land may be directly affected in this docket. If LCRA TSC's preferred route or one of its alternate routes is approved by the PUC, LCRA TSC will have the right to build a facility which may directly affect your land.

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Please Note: While LCRA TSC is required to propose a “preferred route”, the PUC may and often does select an alternate route. As discussed in the enclosed brochure, any one of the proposed routes or a new combination of route segments filed in this application may be selected by the Commission. Additionally, the Commission may modify the proposed routes and segments into different configurations than those proposed, so long as they affect only noticed landowners. A number of alternate configurations have already been suggested by other affected landowners, possibly including your neighbors, and have been included in LCRA TSC’s CCN application as an appendix.

This docket will not determine the value of your land or the value of an easement if one is needed by the LCRA TSC to build the facilities. If you have questions about the transmission line, you may contact Ms. Sara Morgenroth at 800-776-5272, Ext 4151 or (512) 369-4151.

The enclosed brochure entitled “Landowners and Transmission Line Cases at the PUC for Competitive Renewable Energy Zone (CREZ) Projects” provides basic information about how you may participate in this docket, and how you may contact the PUC. Please read this brochure carefully. The brochure includes sample forms for making comments and for making a request to intervene as a party in this docket. In addition to the contacts listed in the brochure, you may call the PUC’s Customer Assistance Hotline at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the PUC’s Customer Assistance Hotline at (512) 936-7136 or toll free at (800) 735-2989.

If you wish to participate in this docket by becoming an intervenor, the deadline for intervention in the docket is August 27, 2010, and the PUC should receive a letter from you requesting intervention by that date. Mail the request for intervention and 10 copies of the request to:

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

Persons who wish to intervene in the docket must also mail a copy of their request for intervention to all parties in the docket and all persons that have pending motions to intervene; at or before the time the request for intervention is mailed to the PUC. In addition to the intervention deadline, other important deadlines may already exist that affect your participation in this docket. You should review the orders and other filings already made in the docket. The enclosed brochure explains how you can access these filings.

An initial prehearing conference for all parties will be scheduled for September 1, 2010 at Palmer Events Center, 900 Barton Springs Road, Austin, Texas. Parties and persons wishing to intervene in this docket are not required to attend this prehearing conference, but are recommended to do so.

Page 3

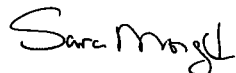
All documents filed in this docket will be made available on the PUC's "Interchange" website (LCRA TSC has no connection with or control over this site) at:

<http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/login/pgLogin.asp>

Copies of the maps illustrating the proposed transmission line project and project area may be obtained or reviewed at these locations: LCRA offices at 6800 Burleson Road, Building 310, Austin, Texas 78744; an appointment must be made to obtain or review the maps by contacting Ms. Sara Morgenroth at (512) 369-4151 or 800-776-5272, Ext 4151. Also, copies of the maps can be viewed on the project website at <http://www.lcra.org/energy/trans/crez/mccameydkg.html> or at county courthouses in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall counties.

Thank you for your interest in this project.

Sincerely,



Sara Morgenroth
Senior Regulatory Case Manager
Regulatory Services
Lower Colorado River Authority
800-776-5272, Ext 4151

Enclosures (5)

CRITERIA FOR SELECTED ROUTES (EXCLUDING MODIFICATIONS) MCCAMEY D-KENDALL-GILLESPIE 345-KV PROJECT MCCAMEY D-KENDALL														
	MK13	MK15 (Wnzi Pref)	MK15A (Wnzi 2)	MK15 Modified PUC Staff ⁴	MK15 Alternate PUC Staff ⁵	MK15 Segrest	MK22	MK23	MK24	MK32	MK33	MK61 (MK15 Mod. Wnzi Pref)	MK62 (Mod. MK15 Modified PUC Staff)	MK63 (Mod. MK15 Segrest)
Base Cost (in millions of dollars)	\$266.4	\$286.8	\$286.6	\$302.3	\$295.6	\$359.9	\$326.4	\$315.6	\$315.9	\$349.3	\$406.8	\$287.3	\$302.9	\$360.5
LAND USE														
1 Length of alternative route	134.99	135.63	137.02	144.13	143.31	140.80	155.29	151.84	151.50	164.42	161.09	139.31	141.81	138.48
2 Number of habitable structures ¹ within 500 ft of ROW centerline	18	45	45	55	64	57	44	43	37	151	153	118	128	134
3 Number of newly affected habitable structures ¹ within 500 ft of ROW centerline (not within 500 ft of an existing transmission line)	18	40	40	51	60	54	23	30	24	146	150	113	123	131
4 Number of habitable structures ¹ within the ROW	0	0	0	0	0	0	0	0	0	17	17	17	17	17
5 Length of ROW parallel to existing transmission line ROW	9.14	24.42	24.42	24.42	13.67	16.26	90.56	77.14	83.92	8.82	0.67	8.58	8.58	0.43
6 Length of ROW parallel to other existing compatible ROW (highways, roads, pipelines, etc.)	30.20	35.34	35.34	54.58	57.83	65.44	3.61	3.61	3.61	121.43	132.29	52.28	71.51	82.98
7 Length of ROW utilizing existing transmission line ROW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8 Length of ROW parallel to parcel lines (not following existing ROW) ²	1.80	5.65	7.63	7.63	9.43	7.63	10.43	9.56	9.56	8.34	8.34	6.48	8.46	8.46
9 Number of parks/recreational areas crossed by ROW	1	1	1	1	0	1	0	0	1	0	0	0	0	0
10 Length of ROW across parks/recreational areas	1.68	1.68	1.68	1.68	0.00	1.68	0.00	0.00	1.68	0.00	0.00	0.00	0.00	0.00
11 Number of additional parks/recreational areas within 1,000 ft of ROW centerline	1	1	1	1	2	2	2	1	1	6	7	6	6	7
12 Length of ROW across cropland	3.69	0.16	0.24	0.62	0.62	1.36	3.04	2.70	2.54	3.96	4.70	1.14	1.60	2.34
13 Length of ROW across rangeland/pastureland	129.72	133.41	134.69	140.98	140.23	136.26	150.33	147.40	147.14	155.26	150.54	128.34	135.91	131.19
14 Length of ROW across land irrigated by traveling systems (rolling or pivot type)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
15 Number of pipeline crossings	9	8	8	8	6	8	8	8	8	12	12	5	5	5
16 Number of transmission line crossings	8	7	7	7	8	8	7	9	7	4	5	6	6	7
17 Number of U.S. and State highway crossings	6	9	9	9	10	12	10	10	9	12	15	10	10	13
18 Number of Farm-to-Market and Ranch-to-Market road crossings	12	9	9	11	11	12	9	9	9	15	16	12	14	15
19 Number of FAA-registered airports within 10,000 ft of ROW centerline	0	1	1	1	1	1	3	2	2	3	2	1	1	1
20 Number of FAA-registered airports within 20,000 ft of ROW centerline	0	0	0	0	0	0	0	1	1	0	0	0	0	0
21 Number of private airstrips within 10,000 ft of ROW centerline	6	12	11	11	11	11	8	7	7	11	11	12	11	11
22 Number of heliports within 5,000 ft of ROW centerline	0	0	0	0	0	2	0	0	0	1	2	1	2	1
23 Number of commercial AM radio transmitters within 10,000 ft of ROW centerline	0	0	0	0	0	1	0	0	0	0	1	0	0	1
24 Number of FM radio transmitters, microwave relay stations, or other electronic installations within 2,000 ft of ROW centerline	2	11	12	13	14	15	4	6	6	32	35	23	25	27
AESTHETICS														
25 Estimated length of ROW within foreground visual zone ³ of U.S. and State highways	8.46	38.32	38.27	49.11	49.25	60.34	16.83	20.16	20.16	146.63	157.87	64.22	75.01	86.24
26 Estimated length of ROW within foreground visual zone ³ of parks/recreational areas	4.24	4.43	4.43	4.43	3.13	6.73	1.58	0.47	3.18	7.69	10.00	5.82	5.82	8.12
ECOLOGY														
27 Length of ROW across upland woodland	29.20	32.35	31.92	31.88	31.91	32.51	19.34	19.80	20.41	36.16	36.80	33.97	33.49	34.13
28 Length of ROW across bottomland/riparian woodland	1.37	0.63	0.63	0.75	0.75	0.75	1.34	1.40	1.34	1.24	1.24	0.69	0.80	0.80
29 Length of ROW across potential wetlands (including forested wetlands)	0.27	0.13	0.15	0.21	0.23	0.23	0.32	0.32	0.32	0.38	0.40	0.19	0.27	0.28
30 Length of ROW across known/occupied federally endangered/threatened species habitat	0.55	0.88	0.88	0.88	0.88	0.00	0.00	0.00	0.00	0.88	0.00	0.88	0.88	0.00
31 Length of ROW across potential golden-cheeked warbler habitat (as mapped by Loomis Partners, Inc.)	3.34	15.35	15.35	15.90	16.05	11.77	8.10	7.46	7.44	17.36	13.23	17.08	17.63	13.50
32 Length of ROW across open water (lakes, ponds)	0.08	0.05	0.05	0.11	0.11	0.11	0.11	0.11	0.11	0.08	0.08	0.02	0.08	0.08
33 Number of stream crossings	144	144	151	160	152	149	190	186	190	154	143	137	153	142
34 Number of river crossings	4	2	2	2	2	4	5	5	5	2	4	2	2	4
35 Length of ROW parallel (within 100 ft) to streams or rivers	1.34	1.79	2.20	2.46	3.35	2.34	3.50	3.73	3.49	1.93	1.82	2.28	2.95	2.84
36 Length of ROW across 100-year floodplains	5.13	3.43	3.33	7.58	7.73	12.07	4.36	3.88	3.60	10.17	14.67	5.08	9.22	13.72
CULTURAL RESOURCES														
37 Number of recorded historic and prehistoric sites crossed	1	11	11	12	12	2	6	6	6	17	7	12	13	3
38 Number of additional recorded historic and prehistoric sites within 1,000 ft of ROW centerline	15	24	24	27	27	14	22	16	16	46	33	29	32	19
39 Number of National Register-listed or determined-eligible sites crossed	1	0	0	0	0	0	1	1	1	1	1	0	0	0
40 Number of additional National Register-listed or determined-eligible sites within 1,000 ft of ROW centerline	6	3	3	5	5	5	0	0	0	6	6	3	5	5
41 Length of ROW across areas of high archeological/historical site potential	103.53	95.97	97.56	105.77	101.35	106.97	104.90	101.76	102.96	97.59	98.79	93.56	103.36	104.56

Note: All length measurements in miles.

¹ Single-family and multifamily dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.

² Property lines created by existing road, highway, or railroad ROW are not "double-counted" in the length of ROW parallel to parcel lines criterion.

³ One-half mile, unobstructed.

⁴ Route "MK15 Modified PUC Staff" does not include PUC Staff witness Mohammed Ali's recommendation for monopole construction on tract c6-001 (See Attachment 13, Supplement 1, page 6, adding \$0.6M), and PUC Staff witness Mohammed Ali's recommendation for a modification to Segment c6 (See Attachment 13, Supplement 1, page 43, adding 0.49 miles and \$1.3M).

⁵ Route "MK15 Alternate PUC Staff" does not include PUC Staff witness Mohammed Ali's recommendation for monopole construction on tract c6-001 (See Attachment 13, Supplement 1, page 6, adding \$0.6M), and PUC Staff witness Mohammed Ali's recommendation for a modification to Segment c6 (See Attachment 13, Supplement 1, page 43, adding 0.49 miles and \$1.3M).

Selected Route Composition

McCamey-D-Kendall-Gillespie Project

Attachment B
Page 2 of 2

Route	Segments
MK13	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b18-b20-b22a-b22b-b22c-b34-b36-b50a-b50b-c7a-c7-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 / Weinzierl Preferred	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b19aa-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15A Weinzierl Alternate	b3a-b5a-b5b-b14a-b14ba-b84-b86-b86a-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Modified PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Alternate PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c12a-c12b-c12c-c19-c20-c21
MK15 Segrest	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK22	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O2-O4-c13c-c13d-c19-c20-c21
MK23	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-O7-c12b-O8-c13d-c19-c20-c21
MK24	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-c13e-c13b-c13c-c13d-c19-c20-c21
MK32	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y8-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK33	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
Additional Routes along IH-10 past Segment b29d	
MK61 (modified MK15 / Weinzierl Pref.)	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b19aa-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK62 (modified MK15 Modified PUC Staff)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK63 (modified MK15 Segrest)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21

**PUC DOCKET NO. 38354
SOAH DOCKET NO. 473-10-5546**

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APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED MCCAMEY D TO KENDALL TO GILLESPIE 345-KV CREZ TRANSMISSION LINE IN SCHLEICHER, SUTTON, MENARD, KIMBLE, MASON, GILLESPIE, KERR, AND KENDALL COUNTIES	§ § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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ORDER

This Order addresses the application of LCRA Transmission Services Company to amend its certificate of convenience and necessity (CCN) to include a new competitive-renewable-energy-zone (CREZ) double-circuit 345-kV transmission line from the new McCamey D station, to be located in Schleicher County, to the existing Kendall station, located in Kendall County.

On December 16, 2010, the State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) issued a proposal for decision (PFD) recommending that LCRA's application be granted. The ALJs recommended that the Commission adopt Staff's MK15 Modified route. However, based upon a weighing of the applicable factors set out in PURA § 37.056 and P.U.C. SUBST. R. 25.101, the Commission determines that route MK63, as modified by this Order, better balances the factors of PURA¹ § 37.056 and P.U.C. SUBST. R. 25.101. Consequently, the Commission adopts the PFD, including findings of fact and conclusions of law, except to the extent the PFD is inconsistent with this Order.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.016 (Vernon 2007 & Supp. 2009) (PURA).

I. Discussion

The Commission has chosen route MK63, as modified by this Order, rather than Staff's MK15 Modified because the Commission finds in the area around Junction and Kerrville, it is more desirable to parallel or closely follow Interstate 10 (I-10) rather than cutting through less developed land. Particularly, in this study area, the Commission finds that I-10 is a more compatible right-of-way for paralleling purposes than the alternative paralleling opportunities available. To reflect that the Commission has chosen a modified version of route MK63 rather than Staff's MK15 Modified, findings of fact 27, 28, 29, 31, 111, 112, 118, 130, and 139 have been deleted, findings of fact 24-26, 30, 33, 48, 49, 55, 83, 92, 93, 94, 100, 108, 113-117, 120, 122-125, and 144 have been modified, findings of fact 52a and 118a have been added, and conclusions of law 9 and 10 have been modified.

The Commission has modified MK63 in the vicinity immediately south of the Kimball County Airport by moving link Y11 as far south as safely and reliably possible using above ground construction while still affecting only noticed landowners. Additionally, the Commission has substituted links c14c and c18aa for links Y22 and Y22a in order to reduce the number of habitable structures affected as the line approaches the Kendall station. To address the modifications the Commission made to route MK63, findings of fact 159-161 were added.

In the PFD, the ALJs recommended that monopoles be used in areas with denser populations. The Commission therefore finds that it is reasonable for LCRA to use monopoles within the City of Kerrville and extending to the limits of its extraterritorial jurisdiction, and within the City of Junction and extending one mile beyond its municipal limits, as those cities' boundaries exist as of January 20, 2011. Because of concerns regarding the aesthetic impacts of the project within the cities of Junction and Kerrville, it is also reasonable for LCRA to work with both the cities of Junction and Kerrville and affected landowners within each of those cities to reach agreement on the material and type of structure used, as well as the spacing and height of the structures. To reflect the Commission's decision to use monopoles in and around Kerrville and Junction, as well as the Commission decision that LCRA shall work with the cities of Junction and Kerrville and affected landowners within each of those cities regarding the aesthetic impact of the project, finding of fact 31a has been added.

Finding of fact 157 has been deleted, as it was unnecessary, and finding of fact 158 was added to reflect the Commission's decisions regarding recommendations and comments made by the Texas Parks and Wildlife Department. Finally, finding of fact 134 was modified as it contained language which was unnecessary.

To reflect corrections the ALJs made after the issuance of the proposal for decision, findings of fact 58 and 59 have been deleted, and finding of fact 103 has been modified.²

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

II. Findings of Fact

Procedural History, Notice, Jurisdiction, and Project Background

1. LCRA Transmission Services Corporation is a non-profit corporation providing service under Certificate of Convenience and Necessity (CCN) No. 30110.
2. On July 28, 2010, LCRA filed an application with the Public Utility Commission of Texas to amend its CCN to include the McCamey D-to-Kendall-to-Gillespie competitive-renewable-energy-zone (CREZ) 345-kV transmission line project. The two lines that comprised this project, McCamey D-to-Kendall, and Kendall-to-Gillespie, were identified by ERCOT in its CREZ transmission optimization study (CTO study), and originally assigned to LCRA to construct as a priority project in *Commission Staff's Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing (May 15, 2009).
3. On December 1, 2010, the Commission determined that the Kendall-to-Gillespie portion of the transmission line would be replaced with a cost-effective alternative that does not require the construction of a transmission line between the Kendall and Gillespie substations at this time.
4. LCRA's double-circuit McCamey D-to-Kendall preferred route and each of the other 59 proposed alternative McCamey D-to-Kendall routes extend from LCRA's approved

² Letter from the Wendy K. L. Harvel, Administrative Law Judge, to Stephen Journeay, Director of Commission Advising and Docket Management (Jan. 5, 2011).

McCamey D station (to be renamed Big Hill station), located in northern Schleicher County, to the existing Kendall station in western Kendall County. The alternative McCamey D-to-Kendall routes proceed generally in a northwesterly to southeasterly direction, in multiple varied corridors. This line may be located in portions of Schleicher, Menard, Mason, Sutton, Kimble, Kerr, Gillespie, and Kendall counties, depending on the route selected.

5. LCRA filed 60 alternative routes. The links in the application can be combined to form over 20,000 different forward progressing routes.
6. Typical structure heights are expected to be approximately 105-185 feet above the ground surface, depending on the type of structures used.
7. LCRA will install two 345-kV circuits on the transmission line.
8. LCRA will build and own the new McCamey D (Big Hill) station for the project, which station will accommodate both the project proposed in this docket and another of its CREZ priority projects (Twin Buttes-to-McCamey D 345-kV line), as well as another CREZ project of South Texas Electric Cooperative, Inc. (McCamey C-to-McCamey D 345-kV line) and future wind generation interconnect facilities to be constructed and owned by Electric Transmission Texas at the collection stations associated with the McCamey D station.
9. LCRA owns the existing Kendall station, at which additional equipment will be installed to accommodate the termination of the new 345-kV transmission lines for this project.
10. Written direct notice of the application was mailed on July 28, 2010, to each owner of land whose property would be directly affected by the proposed transmission line.
11. Written direct notice was mailed to several directly-affected landowners whose names had not appeared on LCRA's original list.
12. On July 28, 2010, LCRA also mailed written direct notice of the application to additional area landowners who might be affected by various potential routing configurations described in the application and LCRA's direct testimony.

13. Written notice was mailed on July 28, 2010 to the municipalities of Boerne, Comfort, Eldorado, Sonora, Menard, Junction, Mason, Harper, Fredericksburg, Ingram, and Kerrville, and to county officials of Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall counties.
14. Written notice was mailed on July 28, 2010, to nine neighboring utilities providing electric utility service, specifically Bandera Electric Cooperative, Central Texas Electric Cooperative, Pedernales Electric Cooperative, Southwest Texas Electric Cooperative, Inc., American Electric Power Texas North Company, Cap Rock Energy Corporation, City of Fredericksburg, Kerrville Public Utility Board, and City of Mason.
15. Notice of the application was published in the following newspapers: *San Angelo Standard Times*, *Eldorado Success*, *Junction Eagle*, *Mason County News*, *Boerne Star and Record*, *Fredericksburg Standard*, *Comfort News*, *San Antonio Express-News*, *Austin American-Statesman*, *Devil's River News*, *Kerrville Daily Times*, *Menard News & Messenger*, *West Kerr Current*, and *Harper News*.

Material Deficiencies

16. No material deficiencies exist in the application.

CREZ Priority Transmission Plan

17. The application is for a CREZ priority project.
18. The project will accomplish the intended results for the CREZ priority project between the McCamey D and Kendall stations.
19. In addition, the project will also provide increased transmission support to meet growing needs in Central Texas and the Hill Country.

Community Values

20. To address and consider community values, LCRA conducted 20 public meetings on May 4, 2009, May 5, 2009, May 7, 2009, May 11, 2009, May 12, 2009, and May 14, 2009. In addition, LCRA conducted public meetings on February 15 and February 16, 17, 18, 22, 23, and 24, 2010.

21. LCRA considered expressions of community values in a review of the questionnaires, letters, meetings, phone calls, and other public input it has received. LCRA received additional information about community values at the technical conference held on September 1, 2010, and at the settlement conferences it held on September 20, 21, and 22, 2010.
22. Based on input from the open houses and throughout the proceeding, strong community values included: avoiding the Texas Hill Country; reducing the effect of the line on habitable structures, particularly in developed areas; reducing the effect on rural residential subdivisions; and building the line with monopoles.
23. The community values of avoiding habitable structures in developed areas and avoiding the Hill Country are competing values.
24. MK63 parallels roadways for much of its distance, thereby avoiding much of the Hill Country.
25. Where MK63 parallels I-10, it does not cut a new path through the heart of the Hill Country. I-10 has already cut through the area and MK63 will not cut an entirely new corridor through the area.
26. MK63 parallels right-of-way (ROW) for over 59 percent of its length.
27. Deleted.
28. Deleted.
29. Deleted.
30. MK63 as modified by this Order provides the best balance between the community values of avoiding the Hill Country and avoiding habitable structures and cities.
31. Deleted.
- 31a. It is reasonable for LCRA to use monopoles within the City of Kerrville and extending to the limits of its extraterritorial jurisdiction, and within the City of Junction and extending one mile beyond its municipal limits, as those cities' boundaries exist as of January 20, 2011. It is also reasonable for LCRA to work with both the cities of Junction

and Kerrville and affected landowners within each of those cities to reach agreement on the material and type of structure used, as well as the spacing and height of the structures.

Recreational and Park Areas

32. Avoiding parks and recreational areas was a consideration in designing the routes proposed in the application. PBS&J reviewed U.S. Geological Survey topographic maps, Texas Department of Transportation (TxDOT) county highway maps and federal, state, and local maps, the Texas Parks and Wildlife Department's (TPWD) "Texas Outdoor Recreation Inventory," the Texas Outdoor Recreation Plan, recent aerial photography, and conducted a limited field reconnaissance.
33. MK13 and Staff MK15 Modified each have one park or recreation area located within 1,000 feet of the centerline. MK32 and MK33 run within 1,000 feet of six and seven parks or recreation areas, respectively. MK63 has 7 parks or recreation areas located within 1,000 feet of the centerline.
34. TPWD is the owner and operator of the 16.1 acre Old Tunnel Wildlife Management Area (Old Tunnel WMA), located in Kendall County. The Old Tunnel WMA is comprised of an abandoned railroad tunnel and includes a bat colony of up to three million Brazilian free-tailed bats and three thousand cave myotis. The Old Tunnel WMA includes nature trails for hiking and bird watching, educational programs, bat watching, and guided nature tours. TPWD estimates that 21,324 visitors visited the Old Tunnel WMA to watch bats emerge from the tunnel. TPWD estimates the annual economic benefit to the region of at least \$748,000.
35. The line should avoid the Old Tunnel WMA bat colony.
36. The Texas Historical Commission (THC) owns and operates the Fort McKavett State Historic Site in Menard County, Texas (Fort McKavett), one of the best preserved and most intact examples of a fort from the Texas Indian Wars. The fort is a State Historic Site, as well as a National Historic District listed on the National Register of Historic Places. Fort McKavett is part of TPWD's Great Texas Wildlife Trails, as well as the THC's Texas Forts Trail. The Fort McKavett State Historical Site is also designated a riparian conservation area.

37. For defensive reasons, Fort McKavett was built between 75 and 100 feet above the surrounding terrain. Transmission towers of up to 180 feet in height may be easily visible from the grounds of the fort. The towers would range from 1.18 miles (link b16b), 1.26 miles (links Z1 and Z2), and 1.55 miles (link b17b) from the fort. The fort remains isolated from modern development, with pristine views in all directions; the view from the fort is much as it was in the mid-nineteenth century. The fort hosts living history events, star parties, Boy Scout functions, and visitor tours throughout the year. Transmission towers of up to 180 feet in height would directly and negatively impact those view sheds from the fort, and would likewise negatively impact the fort's historic character, its isolation, and the overall appeal of the site.
38. Camp Sol Mayer is a 300-acre Boy Scout camp with 18 permanent buildings. Link b17b would cross the southwest corner of the camp, passing near several camping areas and near where the camp's horses are maintained. ROW clearing for the transmission line on the southwest portion of the camp would eliminate many trees that are along the western boundary line and the San Saba River. The camp would also be impacted by links Z1 and Z2, which are both in close proximity to the camp.

Aesthetics

39. "Aesthetics" refers to the subjective perception of natural beauty in the landscape and attempts to define and measure an area's scenic qualities. Aesthetic values considered from a public standpoint in the environmental assessment and alternative route analysis (EA) include topographical variation, prominence of water in the landscape, vegetation variety, diversity of scenic elements, degree of human development or alteration, and overall uniqueness of the scenic environment compared to the larger region.
40. The project area reflects overall a medium to high level of aesthetic value for the region. The eastern portion of the study area, located in the Hill Country, is within an area of the state noted for its scenic beauty and characterized by impressive topographical relief, vegetation and wildflowers, abundant wildlife, and plateaus. The presence of various large creeks and rivers present some viewsapes of high aesthetic value. There are also a number of designated routes or trails, and scenic overlooks and rest areas, within the study area that emphasize the Hill Country's natural beauty and other unique attractions.

41. The level of human impact to the study area is relatively high, due to the extensive agricultural and oil and gas operations, the development of numerous cities, and the development of rural subdivisions.
42. All of the 60 primary alternative routes for the project have some amount of ROW within the foreground visual zone of U.S. and state highways, in part a direct result of the deliberate inclusion of alternative routes paralleling U.S. and state highways.
43. A large number of parks and recreation areas are located within the study area. Only a small portion of the routes' ROW would be located within the foreground visual zone of parks and recreation areas.
44. The alternative routes that follow all or portions of I-10 will be much more visible to more people than any of the alternative routes away from I-10.
45. Construction of the project will likely have both temporary and permanent negative aesthetic impacts, including views of ongoing construction, the cleared ROW, and the transmission facilities.
46. Wherever monopole structures are approved, LCRA will have the flexibility in design to deploy both steel and spun concrete poles where appropriate for each to produce a cost-effective result.
47. Both lattice towers and monopoles will fit within a 100-foot ROW, which is as narrow as the ROW for a double-circuit 345-kV transmission line can be made.
48. MK13 has a length of 8.46 miles visible from U.S. and State highways. Staff MK15 Modified would be visible for a length of 49.11 miles from U.S. and State highways. MK33 has a length of 157.87 miles that would be visible along U.S. and State highways. MK63 will be visible for a length of 86.24 miles from U.S. and State highways.
49. MK33 has the highest visibility from parks or recreation areas with a length of 10 miles visible from state parks and recreation areas. MK13 is visible for a length of 4.24 miles from state parks and recreation areas. Staff MK15 Modified is visible for a length of 4.43 miles from parks or recreation areas. MK63 is visible for a length of 8.12 miles from parks or recreation areas.

50. The aesthetic impact of the line is largely a function of who is viewing it from where.
51. The central project area contains large tracts of relatively unfragmented and undeveloped land. The natural beauty of this part of the project area includes scenic vistas, meadows, and oak-lined creeks and rivers.
52. I-10 is a means of transportation across the state, where aesthetically pleasing views are incidental. Travelers and anyone in the proximity of I-10 in the project area will see commercial development including gas stations, convenience stores, chain and fast-food restaurants, strip malls, traffic – including heavy tractor-trailers, car lots, power lines, roadways – including feeder roads, and all of the development associated with small towns, larger municipalities, and cities like San Antonio. It is far more likely that a 345-kV line will be lost in the visual foreground along I-10 than if it were run along a central or northern route through what is undoubtedly the aesthetically pleasing and relatively undeveloped Texas Hill Country.
- 52a. The Commission finds that in this study area, following I-10 along MK63 is a more compatible right-of-way for paralleling purposes than the alternative paralleling opportunities available.

Archeological and Cultural Resources

53. Much of the study area has a high probability of containing previously unrecorded cultural resource sites. PBS&J's cultural resources evaluation was based on known data regarding sites in the area, the density of the sites, and the National Register of Historic Places (NRHP) and State Archaeological Landmark potential for the sites.
54. Of the 60 primary alternative routes evaluated for the project, 54 cross one or more recorded historic or prehistoric sites, with four routes crossing at least 15 or more sites. All 60 routes have additional recorded historic or prehistoric sites within 1,000 feet of the ROW centerline, with numbers ranging between six and 46 sites. Of the primary alternative routes, 22 cross one NRHP-listed or determined eligible site, and the other 38 cross no such sites. Exactly half of the primary alternative routes have ROW centerline within 1,000 feet of one or more additional NRHP-listed or determined eligible sites, ranging from one to six sites, and the other 30 have none. The number of recorded

historical and archaeological sites within 1,000 feet of the centerline of the routes varies from eight to 70 sites.

55. There are 22 known or recorded historical or archeological sites either crossed or located within 1,000 feet of the centerline on MK63.
56. Mitigation and construction practices are available to reduce or eliminate impacts to cultural resources sites. LCRA planned appropriately for addressing any sites encountered during construction.
57. None of the route segments proposed in this case cross Fort McKavett.
58. Deleted.
59. Deleted.
60. Routes parallel to I-10 include commercial and residential development normally associated with proximity to an interstate highway system. Historical and cultural sites in these areas are more likely to have been disturbed than those in the central and northern project areas.

General, Surveys, and Mitigation

61. LCRA's consultant, PBS&J, examined a wide range of environmental information in its EA, which was researched and analyzed through a variety of methods and by representatives of various environmental disciplines.
62. LCRA represents that all routes presented in the application (and all segments that form those routes) provide environmentally acceptable alternatives.
63. LCRA's preferred route (MK13) was ranked first from an ecological standpoint in the EA.
64. LCRA avoided specific known occupied habitat locations in the process of delineating preliminary route links and alternative routes.
65. LCRA has undertaken a permitting process under Section 10 of the Endangered Species Act with the U.S. Fish and Wildlife Service (USFWS) to consider impacts to federally listed species and their habitat.

66. Animal species potentially occurring along the proposed transmission routes include, but are not limited to, the federally listed (endangered) black-capped vireo and golden-cheeked warbler, and the state-listed (threatened) zone-tailed hawk, bald eagle, Texas tortoise, and Texas horned lizard.
67. The EA lists all threatened or endangered species of potential occurrence in the study area based on information from USFWS, TPWD, and TPWD's Natural Diversity Database (TXNDD).
68. Once a route is selected, LCRA will account for the location of endangered or threatened species on individual landowners' property or additional known occupied habitat by routing adjustments, construction procedures and techniques, and mitigation. LCRA shall consult with the USFWS for known occupied or potential habitat for endangered species.
69. LCRA will use a habitat conservation plan (HCP) development and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS.
70. Prior to construction, an assessment will be made to verify whether any habitat for endangered or threatened species is present along the route that is approved. LCRA will seek a permit from USFWS to take endangered species habitat.
71. Different techniques are available to accommodate all federally-listed endangered species identified in the study area. If a route passes through an area containing plant species composition and configuration favorable to a protected species, or if known individuals of the species are in the area, LCRA will adjust the route in minor ways to avoid higher quality blocks of habitat; transmission towers will be placed in existing openings to limit further clearing for ROW access; and permits will be sought for appropriate clearing permissions along with possible mitigation.
72. LCRA will undertake mitigation projects to protect the habitats of warbler, vireo and other species.

Fragmentation and Oak Wilt

73. Wildlife habitat throughout the study area is fragmented by land use impacts such as roads, brush clearing associated with ranching and agricultural activities, pipelines, electric distribution lines, and other activities normally engaged in by landowners in the study area.
74. The project will not jeopardize the continued existence of the warbler or vireo.
75. Staff concluded that any route selected in this case will affect the environmental integrity of the study area.
76. Due to lack of access to private property, the absence of TXNDD records at a specific site within the project area does not mean that the species does not occur there. Most TXNDD records are gathered from publicly accessible lands, such as parks and wildlife management areas and highway ROW. Most of the impacted project area consists of privately owned ranch land. Endangered species and their habitat on private lands may not be reflected in TXNDD records due to the lack of access and state laws governing the collection and dissemination of biological information from private lands.
77. Major highway ROW comprises the largest corridors of habitat fragmentation in the project area, particularly the I-10 corridor. Avoiding additional fragmentation of wildlife habitat is one of the most important environmental considerations for the project. Land fragmentation, and its consequence, is one of the greatest statewide challenges to wildlife management and conservation in Texas.
78. The portion of the project area north of I-10 contains some of the largest blocks of unfragmented wildlife habitat on the Edwards Plateau.
79. The I-10 corridor is fragmented to a much greater extent than the central routes or northern routes.
80. MK13 and all of the links contributing to the central routes cut through the middle section of lands managed by the Doss-Harper Wildlife Management Association. Landowners who are members of the Doss-Harper Wildlife Management Association manage their wildlife resources in a cooperative that helps them overcome some of the

inefficiencies common to land fragmentation. MK13 would run through the center of the Doss-Harper WMA for approximately 12 miles.

81. Additional fragmentation of wildlife habitat is expected to spread oak wilt disease. Oak wilt is caused by a fungus that clogs water-conducting vessels in infected oak trees, causing them to wilt and die. Oak wilt can be spread through the roots of oak trees. Oak wilt can also be spread much greater distances by sap-feeding beetles that carry spores from infected trees and deposit them on "wounds" in uninfected trees. Once a new tree is infected, the disease will spread through root contact to other nearby trees at a rate of approximately 75 feet per year.
82. The central portion of the Hill Country is currently impacted by very little oak wilt. Oak trees in the project are susceptible to oak wilt as a result of cutting and pruning necessary to clear and maintain the ROW. It is estimated that approximately 700 to 1,600 live oaks per mile will be removed and another 200-500 live oaks per mile will need to be pruned.
83. The selection of MK13 or a central or northern route is expected to spread oak wilt more than a route that uses the I-10 corridor such as MK32, MK33, MK63, or Staff MK15 Modified.

Warbler and Vireo

84. Potential habitat for the vireo and warbler is likely to be encountered along most of the routes. Data provided by Loomis Partners, Inc. documents that all of the routes cross potential warbler habitat. There are known occurrences of the vireo and warbler along or near segments proposed as part of route alternatives for the project.
85. Without ground inspection of particular ecological areas, it is difficult to impossible to determine the presence of suitable habitat for vireo. Vireo habitat consists of patchy shrubs interspersed with open areas and cannot be identified by aerial photography.
86. Inhabited vireo habitat occurs throughout the area and along most, if not all, routes. It is unlikely that potential habitat and actual vireo can be avoided as part of the certification process.

87. Based on the Commission's past practices and the work of utilities with USFWS, accommodations for vireo can be made through structure placement, ROW clearance, and other forms of mitigation.
88. Due to species composition and configuration, it is possible to identify and map potential warbler habitat with some accuracy through certain types of aerial photography. Attempts can then be made to minimize and avoid potential habitat.
89. Warbler populations are not inconsistent with either existing or newly-constructed transmission line ROW.
90. Transmission line projects in Texas have been successfully constructed through known occupied habitat for warbler and vireo.
91. The project will have some acceptable impact on the vireo and warbler. LCRA can institute avoidance and mitigation efforts to minimize any impact on these species.

Creeks, Streams and Rivers

92. Length parallel to streams and rivers is a highly significant environmental factor. MK13 has 1.34 miles parallel to rivers and streams. MK32 and MK33 parallel 1.93 and 1.82 miles, respectively. Staff MK15 Modified parallels streams and rivers for 2.46 miles. The P-line routes range between 3.49 and 3.73 miles. MK 63 parallels streams and rivers for 2.84 miles.
93. Staff MK15 Modified and MK32 have two river crossings. MK13 and MK33 have four river crossings. MK22, MK23, and MK24 have five river crossings each. MK63 has 4 river crossings.
94. MK13 and MK33 have 144 and 143 stream crossings, respectively. MK32 has 154 stream crossings. Staff MK15 Modified has 160 stream crossings. MK22, MK23, and MK24 cross between 186 and 190 streams each. MK63 has 142 stream crossings.
95. Creek and river crossings can be spanned by the line in a manner that is technically feasible and minimally disruptive of natural resources in the surrounding area. For construction near rivers and creeks, LCRA will implement appropriate erosion control measures as described in sections 1.5, 5.1.2, 5.1.3, and 5.1.4 of the EA. LCRA will also

- develop and implement a storm water pollution prevention plan (SWPPP) to prevent silting of bodies of water, including creeks, rivers, and springs. The SWPPP will be in effect during all phases of construction and until re-growth is achieved.
96. TPWD strongly recommends that the project avoid any adverse impacts to ecologically significant stream segments (ESSS).
 97. All of the route options would cross at least one ESSS and many of the routes will cross more than one ESSS, some at more sensitive locations than others.
 98. LCRA expects no adverse impact to ESSSSs in light of LCRA's proposals for spanning creeks and other measures that are intended to be minimally disruptive of natural resources in the surrounding area.
 99. All routes using links b21c or z4, b33 or z5, b34, or b35a, will cross the James River ESSS, and the majority of central routes use one of these links. All routes that use links b44, b50b, b52, or O3 would cross the Pedernales River ESSS (most of the routes use one of these links). MK13 crosses both the James River on link b33 and the Pedernales River on link b50b.
 100. Staff MK15 Modified, MK63, MK32, and MK33 do not cross the James or Pedernales Rivers. These routes contain a single ESSS crossing—the Fessenden Branch crossing on link b29d, which is at a previously disturbed location, because the stream is already crossed by I-10.
 101. Potential impacts to mussel species are expected to be minimal. LCRA's construction techniques are adequate to deal with potential impacts to mussel species.
 102. Although LCRA can safely span creeks and streams, due to potential risks to mussel sanctuaries, karstic formations, and ESSS, the P-lines, MK13, and central routes are less attractive from an environmental perspective than routes that parallel I-10.

Old Tunnel WMA and Bat Issues

103. The Eckert James River Bat Cave Preserve is located on MK13, with one of the largest known concentrations of breeding Mexican free-tailed bats located near links b34 and b36.

104. The Old Tunnel WMA also has a bat colony located near links A3 and O4. Based on observed flight patterns, the bats at Old Tunnel WMA are expected to fly into the area of the line.
105. For link A3 and O4 structure designs, all conductor-to-conductor and conductor-to-tower clearances are well above the recommended clearance of 60 inches, minimizing the risk of electrocution to bats.
106. Although there is no evidence regarding bat collisions with the existing 138-kV line near Old Tunnel WMA, there is some scientific evidence that suggests that power lines pose some risk to birds and bats due to subsonic, ultrasonic and ambient noise, and electromagnetic radiation.

Goal for Renewable Energy

107. The project is necessary to deliver renewable energy generated in the CREZ.

Engineering Constraints

108. MK63 will be constructed in new areas and parallel to existing ROW. New easements will vary from an estimated minimum easement width of 100 feet to an estimated maximum easement width of 160 feet, and these widths are sufficient for all LCRA structure types.
109. LCRA will design and construct the proposed transmission line to meet nationally recognized guidelines and specifications, including the applicable version of the National Electrical Safety Code, as well as established regional electric system planning criteria to address various categories of contingency conditions and applicable PUC rules, in order to operate the proposed transmission line in a safe and reliable manner.
110. The Kimble County Airport presents a significant engineering constraint when routing to the south.
111. Deleted.
112. Deleted.
113. Link Y11, as filed, is south of the airport, and is part of MK33. It would be located approximately 1,200 to 1,800 feet from the south end of the airport's runway.

- 114. Link Y11, as filed, would run through a flood plain north of the Llano River.
- 115. Link Y11 can be moved to the southern limit of noticed property owners.
- 116. LCRA cannot build a safe and reliable transmission line along link Y11 as filed using above-ground construction.
- 117. Because of the engineering constraints, link Y11 as filed would have to be built underground at the cost of \$54 million for one-half mile, and is prohibitively expensive.
- 118. Deleted.
- 118a. Link Y11, when moved to the southern limit of noticed property owners, can be built safely and reliably at a reasonable cost above-ground.

Costs, Compatible ROW, and Prudent Avoidance

- 119. LCRA's estimated transmission line costs for all routes range from \$251.8 million to \$406.8 million.
- 120. LCRA's preferred route would cost approximately \$266.4 million. MK33 would cost approximately \$406.8 million. Staff MK15 Modified is estimated to cost \$302.3 million. MK63 is estimated to cost \$360.5 million. The cost of MK63, as modified in this Order, will not include the cost of undergrounding along link Y11, which costs were included in MK63 as filed.
- 121. The lower cost of MK13 does not outweigh the benefits associated with paralleling more ROW.
- 122. MK63 parallels compatible ROW for more than 59 percent of its length and avoids much ranch land located in the central part of the study area.
- 123. MK 63 uses links b84 and b86 along which one landowner has consented to the line.
- 124. MK63 affects 134 habitable structures.
- 125. MK63 complies with the Commission's policy on prudent avoidance.
- 126. LCRA's proposed alternative routes reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields (EMF).

127. The project design incorporates, where technically feasible, optimal phasing arrangements and ground clearance heights that result in lower EMF levels, which is consistent with prudent avoidance from an engineering perspective.
128. The EMF levels from this project are within the range of the fields that people can experience every day in normal living and working environments and are substantially below the EMF exposure limits adopted by recognized international organizations.
129. Based on the current scientific research, there is no reliable scientific basis to conclude that exposure to power frequency EMF from the line will cause or contribute to adverse health effects in people or animals.

Alternative Routes with Less Impact

130. Deleted.
131. LCRA identified landowner-proposed route modifications.
132. LCRA made some modifications before filing the application.
133. As part of LCRA's analysis of landowner-proposed segment modifications not incorporated into LCRA's proposed routes, whether proposed by the landowner before or after the CCN application filing, LCRA has provided estimates of the modified route length and cost associated with each of these modifications. This information facilitates the Commission's consideration of these landowner proposals.
134. These landowner-requested routing adjustments mapped and reviewed in LCRA's attachment 13 (as supplemented) are generally longer and generally require more angle structures than LCRA's filed routes in those respective locations. These requested adjustments are generally in the same land use/habitat types as the filed routes in those locations and they are feasible adjustments from an environmental standpoint.
135. These routing adjustments affect only noticed landowners in a potentially different manner than shown in LCRA's proposed routes and may add length and cost.
136. No landowner has offered financial contribution relating to alternative routes or route modifications.

137. The Bannwolf modification would reroute link O4 from a northern property boundary through the middle of the property belong to Mr. and Mrs. Nance.
138. The Bannwolf modification is not adopted.
139. Deleted.

Proposed Modifications to CREZ Order

140. LCRA proposes to use bundled Cumberland conductor (2 x 1926.9 aluminum conductor steel-supported/trapezoidal wire (ACSS/TW)) instead of the bundled Merrimack conductor (2x1433 ACSS/TW) that ERCOT assumed in its CTO study.
141. Staff and ERCOT recommend the use of the bundled Cumberland conductor.
142. LCRA's proposed modification to use the bundled Cumberland conductor is approved.

Cost Discrepancies

143. ERCOT estimated the overnight cost for the project at \$257.56 million and 137 miles in length.
144. LCRA's estimated cost for MK63 is \$360.5 million.
145. LCRA's estimates include costs not contemplated by ERCOT, including endangered species habitat mitigation, longer routes, complex terrain, constrained paths, and capitalized interest.
146. LCRA's estimated construction costs are higher due to maneuvering equipment in rugged terrain and drilling foundations in harder geologic substrates typical in the Hill Country area.
147. LCRA's estimated costs are reasonable even though they vary from ERCOT's estimate.

TPWD Comments and Recommendations

148. TPWD provided comments and recommendations regarding the project in a letter dated September 24, 2010 (TPWD letter) and through the testimony of four TPWD witnesses.
149. The TPWD letter and evidence addressed issues related to ecology and the environment. TPWD did not consider other factors that the Commission and utilities must consider and

balance in CCN applications, including the numerous routing criteria that involve direct effects on people.

150. TPWD concluded that construction of any of the proposed routes would require almost entirely new ROW and take significant amounts of existing wildlife habitat.
151. TPWD concluded that routes MK32 and MK33 would have the least adverse impact on fish and wildlife resources.
152. TPWD owns and operates the 16.1 acre Old Tunnel WMA in Kendall County, Texas, located within 500 feet of links A3 and O4, the latter of which is part of proposed route MK 22. TPWD opposes all routes that use links A3 or O4 because of the expected negative impact to the public benefits of Old Tunnel WMA, and the Old Tunnel bat colony.
153. Once the Commission approves a route, LCRA can access private property and perform a survey of the area, and if permits are necessary, apply for and comply with all permit conditions.
154. LCRA does not have access to private property prior to the selection of a route.
155. No requirement exists for a particular methodology for assessment of endangered species for the examination by the Commission of the environmental-integrity factor. The Commission's acceptance of the known-habitat analysis is not prohibited by any regulatory requirements.
156. LCRA must comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water prevention, and all other environmental concerns.
157. Deleted.
158. This order addresses only those TPWD recommendations and comments for which there is record evidence.

Modifications to MK63

159. It is appropriate for LCRA to build the project using route MK63, as modified by this Order.

160. In the vicinity immediately south of the Kimball County Airport, it is appropriate for LCRA to move link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners. It is not appropriate for this modification to Y11 to affect LCRA's ability to safely and reliably operate the line or the safe use of the Kimball County Airport.
161. In the area approaching the Kendall station, it is appropriate that links c14c and c18aa shall be used rather than links Y22 and Y22a.

III. Conclusions of Law

1. LCRA is an electric utility as defined in Public Utility Regulatory Act (PURA) §§11.004 and 31.002(6).
2. The Commission has jurisdiction over this matter pursuant to PURA §§14.001, 32.001, 37.051, 37.053, 37.054, 37.056, and 39.203(e).
3. LCRA filed its CREZ CCN application in this docket on July 28, 2010, in conformance with the Commission's standard CREZ CCN application form and the Commission's orders in P.U.C. Docket Nos. 33672 and 35665. LCRA's application has met the filing requirements set forth in P.U.C. SUBST. R. § 25.216(g)(2) and (3).
4. LCRA provided proper notice of the application in compliance with PURA §37.054 and P.U.C. PROC. R. 22.52(a).
5. LCRA's application is sufficient under P.U.C. SUBST. R. 25.216(g)(2) and (3).
6. LCRA's notice of its application was adequate.
7. SOAH exercised jurisdiction over this docket pursuant to PURA §14.053 and TEX. GOV'T CODE ANN. §2003.049.
8. This docket was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001.
9. LCRA is entitled to approval of the application, as described in the findings of fact, using MK63 as modified by this Order, taking into consideration the factors set out in PURA § 37.056 and P.U.C. SUBST. R. 25.101.

10. MK63, as modified by this Order, complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
11. The project, as a CREZ transmission project identified in Docket No. 35665, is exempt under PURA §§ 39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement of proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address 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, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.
12. The proposed project is consistent with the Commission's goals for the CREZ program and P.U.C. SUBST. R. 25.174 in that it provides (1) long-term cost effective solutions consistent with the Final Order in Docket No. 37928, and (2) transmission facilities consistent with ERCOT's recommendations to be constructed as soon as possible to relieve existing and growing constraints in delivering wind generation and placed in service.
13. The project is consistent with and in furtherance of the goals and mandates of PURA § 39.904.
14. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient under PURA § 39.904(g)(3) to grant LCRA's application for a CCN in this docket.

IV. Ordering Paragraphs

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

1. LCRA's CCN is amended and LCRA's application to build a new 345-kV double-circuit transmission lines that extend from the McCamey D switching station to the Kendall switching station is approved.

2. LCRA shall build the project using route MK63, as modified by this Order. LCRA shall, in the vicinity immediately south of the Kimball County Airport, move link Y11 as far south as safely and reliably possible using overhead construction while still affecting only noticed landowners. This modification to Y11 shall not affect LCRA's ability to safely and reliably operate the line, nor shall it affect the safe use of the Kimball County Airport. Additionally, as the route approaches the Kendall station, LCRA shall use links c14c and c18aa rather than links y22 and y22a.
3. LCRA shall be permitted to monopole if it is more cost effective. In addition, LCRA shall endeavor to use the monopole structures in situations where the right-of-way is extremely constrained, the right-of-way could disproportionately affect a particular landowner, or the cost of the right-of-way acquisition is extremely high.
4. LCRA shall use monopoles within the City of Kerrville and extending to the limits of its extraterritorial jurisdiction, and within the City of Junction and extending one mile beyond its municipal limits, as those cities' boundaries exist as of January 20, 2011. LCRA shall work with both the cities of Junction and Kerrville and affected landowners within each of those cities to reach agreement on the material and type of structure used, as well as the spacing and height of the structures. Where the municipality and a landowner disagree as to these issues, the landowner's views shall prevail over the municipality.
5. LCRA shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviations in the approved 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, excluding public rights-of-ways. Any agreed minor deviations shall not delay the project beyond its Commission-required completion date, nor shall any minor deviation add any significant cost to the project.
6. LCRA TSC 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, LCRA TSC 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 and not cause an unreasonable increase in cost or delay the project. Unless these two conditions are met, this paragraph does not authorize LCRA TSC to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

7. LCRA shall implement erosion control measures as appropriate. LCRA shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or landowners' representatives. LCRA shall not be required to restore original contours and grades where necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.
8. In the event LCRA or its contractors encounter any archaeological artifacts or other cultural resources during construction of the project, LCRA shall cease work immediately in the vicinity of the resource and report the discovery to the THC and take action as directed by the THC.
9. LCRA shall follow the procedures outlined in the following publications for protecting raptors: Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006, Avian Power Line Interaction Committee (APLIC), 2006 and the Avian Protection Plan Guidelines published by APLIC in April 2005.
10. LCRA shall install bird diverters at all river crossings.
11. LCRA shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
12. LCRA shall comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the project.
13. Once a route is selected, LCRA shall perform a survey of the area, and if permits are necessary, apply for and comply with all permit conditions. LCRA shall account for the location of endangered or threatened species on individual landowners' property or additional known occupied habitat by routing adjustments, construction procedures and

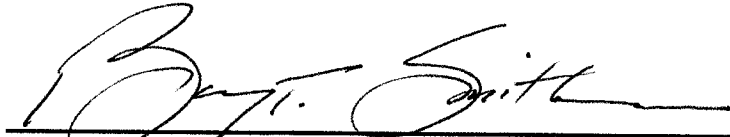
- techniques, and mitigation. LCRA shall consult with the USFWS for known occupied or potential habitat for endangered species.
14. LCRA shall use a habitat conservation plan development process and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS.
 15. LCRA shall undertake mitigation projects to protect the habitats of warbler, vireo and other species, and shall institute avoidance and mitigation efforts to minimize impact on these species.
 16. LCRA shall minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate ROW clearance for the transmission line. LCRA shall re-vegetate using native species considering landowner preferences and avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.
 17. LCRA shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides for controlling vegetation within the ROW and that such herbicide use comply with rules and guidelines established in the Federal Insecticide, Fungicide and Rodenticide Act and with the Texas Department of Agriculture regulations.
 18. For construction near rivers and creeks, LCRA shall implement appropriate erosion control measures as described in sections 1.5, 5.1.2, 5.1.3, and 5.1.4 of the EA. LCRA shall also develop and implement a storm water pollution prevention plan (SWPPP) to prevent silting of bodies of water, including creeks, rivers, and springs. The SWPPP will be in effect during all phases of construction and until re-growth is achieved.
 19. LCRA shall comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water prevention, and all other environmental concerns.
 20. LCRA shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b). In addition, LCRA shall provide final construction costs, with any necessary explanation for cost variance, after completion of

construction and when all charges have been identified. LCRA shall file in Project No. 37858 information pursuant to P.U.C. SUBST. R. 25.216(f) and the order in Docket No. 37928.

21. LCRA shall engage in discussions with the Texas Department of Transportation and use its best efforts to reach agreement with the Department to use state right-of-way along the proposed project where it parallels I-10. These discussions shall not unreasonably delay the completion of this project and, in any event, if agreement has not been reached on or before September 1, 2011, then LCRA shall proceed with construction on the proposed project.
22. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 24th day of January 2011

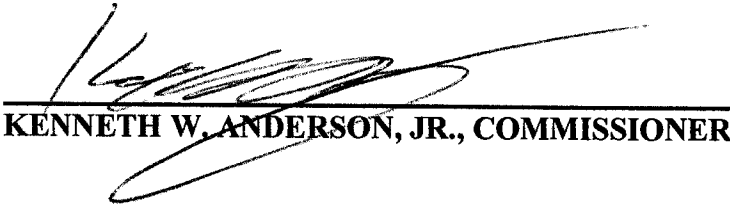
PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 16, 2010

2010 DEC 16 PM 4:45
Courier Pick-up

TO: Stephen Journeay, Director
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

RE: SOAH Docket No. 473-10-5546
PUC Docket No. 38354

Application of LCRA Transmission Services Corporation to Amend its
Certificate of Convenience and Necessity for the Proposed Mccamey D to
Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton,
Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties

Enclosed is a copy of the Proposal for Decision (PFD) in the above-referenced case. Please file-stamp and return a copy to the State Office of Administrative Hearings for our records.

Please place this case on an open meeting agenda for the Commissioners' consideration. The jurisdictional deadline in this case is January 24, 2011. It is my understanding that you will be notifying me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy K. L. Harvel".

Wendy K. L. Harvel
Administrative Law Judge

Enclosure
xc: All Parties of Record

**SOAH DOCKET NO. 473-10-5546
PUC DOCKET NO. 38354**

APPLICATION OF LCRA	§	BEFORE THE STATE OFFICE
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY FOR THE PROPOSED	§	
MCCAMEY D TO KENDALL TO	§	OF
GILLESPIE 345-KV CREZ	§	
TRANSMISSION LINE IN	§	
SCHLEICHER, SUTTON, MENARD,	§	
KIMBLE, MASON, GILLESPIE, KERR,	§	ADMINISTRATIVE HEARINGS
AND KENDALL COUNTIES	§	

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Attachment A

SOAH DOCKET NO. 473-10-5546
PUC DOCKET NO. 38354

APPLICATION OF LCRA	§	BEFORE THE STATE OFFICE
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY FOR THE PROPOSED	§	
MCCAMEY D TO KENDALL TO	§	OF
GILLESPIE 345-KV CREZ	§	
TRANSMISSION LINE IN	§	
SCHLEICHER, SUTTON, MENARD,	§	
KIMBLE, MASON, GILLESPIE, KERR,	§	
AND KENDALL COUNTIES	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. SUMMARY OF CASE AND RECOMMENDATIONS

LCRA Transmission Services Corporation's (LCRA TSC or Company) proposed routes for this Project can be divided into four groups: routes that parallel US Highway 277 and I-10 for all or a significant portion of their length (MK32, MK33); routes that parallel I-10 for a portion of their length but do not parallel Highway 277 (Staff's MK15, MK15, MK61, MK62); routes that run more in the center of the study area (MK13 (LCRA TSC's preferred route) and numerous others); and the northern routes, called "P-Lines" that parallel a portion of a 138-kV transmission line (MK22, MK23, MK24).

The routes that parallel Highway 277 and I-10 are superior environmentally but affect more habitable structures than the central routes. They are also more expensive. The central routes affect fewer habitable structures and are some of the least costly routes proposed, but they cut through undeveloped land in the Texas Hill Country, parallel little existing right-of-way (ROW), and are much poorer environmentally. The P-Line routes are disfavored by LCRA, Staff, and the Texas Parks and Wildlife Department (TPWD). They are longer than many of the routes, perform poor environmentally, and are expensive. Although they parallel an existing 138-kV transmission line, that line is on wooden pole, H frame structures. Much of the easement under that line has significant

shrubbery and growth, and is not a ROW that is as compatible with a 345-kV line as I-10. For those reasons, the P-Lines are not recommended.

The ALJs recommend the selection Staff's MK15. It parallels highways for much of its length, performs better environmentally than routes such as the preferred route MK13 that runs through the center of the study area, is more cost-effective than the routes that parallel Highway 277 before turning east at I-10, and affects fewer habitable structures than the I-10 routes that run through Kerrville. Staff's MK15 also runs north of the Kimble County Airport. Construction along I-10 to the south of the airport would require underground construction, costing \$54 million for a one-half mile portion of the line to be buried, which makes routes paralleling I-10 through the City of Junction cost-prohibitive.

Clear View Alliance's (CVA) proposed route, MK33, is the best route environmentally. It parallels existing highway ROW for almost its entire length. It is, however, the most expensive route at \$406.8 million because it is long, using Highway 277 to move south from the McCamey D substation all the way to I-10 before turning east. It also includes a \$54 million cost to bury the line south of the Kimble County Airport. Were the cost of MK33 not so great, it would be the best routing option proposed, and the ALJs would recommend it. MK32, which deviates from MK33 at Junction to run north of the airport, is more cost-effective at \$349.3 million, but it is still on the upper-end of all routes in terms of cost. MK32 is also an attractive option. With the understanding that cost is a significant factor in the Commission's route selection process, the ALJs recommend Staff's MK15, which parallels I-10 for much of its length but diverts around Junction, with an estimated cost of \$302.3 million. While Staff's route is still more expensive than the preferred route, which is estimated to cost \$266.4 million, it is well within the range of all filed routes. Staff's route parallels I-10 for much of its length, while avoiding the cities of Junction and Kerrville and avoids more habitable structures due to the deviation around Kerrville.

Staff's MK15 does, however, affect the Tierra Linda Ranch subdivision. Tierra Linda is a rural subdivision that has a pipeline easement running through it. Staff's MK15 parallels the pipeline easement roughly through the middle of the subdivision. The affected property owners in

the subdivision participated in the hearing, as did the homeowners' association and property owners who are not directly affected by the line but live in the subdivision. Tierra Linda is opposed to the line running through its subdivision. The alternative to running the line through Tierra Linda is to use either the preferred route, which is poor environmentally, and opposed by numerous intervenors, use a P-Line route, which is disfavored by Staff, LCRA TSC, and TPWD, or continue to parallel I-10 through Kerrville, affecting more habitable structures, including 17 that appear to be in the ROW. None of these choices near the termination point are good, and this Proposal for Decision (PFD) lays out the options to permit the Commission to decide. The ALJs recommend Staff's MK15 because it affects fewer habitable structures and does not have any habitable structures within the ROW. One promising alternative to Staff's MK15, however, is MK62. This route is the same as Staff's MK15 except that it continues along I-10 through Kerrville rather than turning north from I-10, through Tierra Linda. If the Commission determines MK62 to be the better option, it carries the environmental and aesthetic advantages of paralleling I-10 for a greater length.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The Commission has jurisdiction to adjudicate this case pursuant to Public Utility Regulatory Act (PURA) §§ 14.001, 32.001, 37.001, 37.051, 37.053, 37.054, 37.056, 37.057, 39.203, 39.904, and P.U.C. SUBST. R. 25.101, 25.174, and 25.216. SOAH has jurisdiction to conduct a hearing on the merits and to prepare a proposal for decision pursuant to PURA § 14.053 and certain portions of the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2003.021(b)(2) and 2003.049. The Commission's jurisdiction over this docket and the issues raised and addressed herein were not challenged by any party. Jurisdiction is fully addressed in the Findings of Fact and Conclusions of Law.

III. THE PARTICIPANTS

Over 1,100 persons and entities intervened in this proceeding. The intervenors included individuals, aligned groups, cities, counties, a public utility board, environmental groups, and state agencies. At the final prehearing conference, over 40 parties appeared and participated. At the hearing on the merits, over 30 parties actively participated by questioning witnesses, presenting evidence, and raising objections. The large groups of intervenors included CVA, Tierra Linda, and P-Line, although many of the individual intervenors from Tierra Linda are not considered to be directly affected landowners because their properties are more than 500 feet from the centerline, they intervened individually and as part of the homeowners' association. The two cities that participated most actively in the hearing were the City of Kerrville and the City of Fredericksburg, working with Kerr County, the Kerrville Public Utility Board (KPUB), and Gillespie County, respectively. State agency participation included TPWD, which intervened as well as providing a comment letter. The Texas Historical Commission (THC) also intervened and participated in the hearing. CVA was a group formed of hundreds of intervenors who all advocate for the line to be routed along Highway 277 and I-10, away from the central routes and parallel to existing paved highway. CVA included intervenors along almost every proposed link, and included individuals who live along I-10 who, as part of the group, advocate for the line to be built parallel to the highway, through or close to their properties, rather than through land in the central part of the study area.

Parties affected by the lines that would have run between Kendall and Gillespie and the P-Lines south of the Gillespie substation also participated. They included the Fredericksburg River Road intervenors, the Sharpes, the Fosters, and the A304 intervenors. Those intervenors advocated for a route other than the P-Lines.

Staff participated actively as well, supporting a modified MK15 (Staff MK15), which Staff asserts best balances the factors to be considered in routing a new transmission line. Staff opposed the use of the P-Lines and agreed that the line should be routed parallel to existing highway as much as possible while still considering cost and choosing a route that was more cost-effective than paralleling Highway 277 and I-10 for the maximum length at the maximum cost.

In addition to the groups listed above, numerous individuals participated in the hearing either *pro se* or through counsel. Some people had testimony admitted into the record but did not participate thereafter. Others filed statements of position and did not question witnesses but observed the entire hearing and filed briefing. The level of participation in the case and the professionalism of all involved enabled the hearing to proceed efficiently.

The chart below illustrates the routes opposed, supported, and any alternate preferences stated by the majority of the participating parties.¹

Route Preferences by Party²

Party	MK 13 (LCRA Pref)	MK 15 (Wnzi Pref)	MK 15A (Wnzi 2)	Staff MK15	MK 22	MK 23	MK 24	MK 32	MK 33	MK 61 (MK 15 Mod. Wnzi Pref)	MK 62 (Mod MK 15 Modified PUC Staff)
A3/04											
AC RANCHES											
AHMAD FAKHR											
ALLIANCE FOR A3 ³											
B-47 GROUP											
B21 GROUP AND HARVEY BOERNER											
BRZEZINSKI, ET. AL											
CEW VENTURES											
CHESTER & KATHERINE FOSTER											
CHIROSS											

¹ These tables are taken from the Alliance for A3 Updated Attachment 1. For convenience, LCRA TSC Ex. 26 is attached to the PFD as Attachment A.

² Routes are derived from LCRA TSC Ex. 26, which is attached to the PFD as Attachment A. This chart does not include the Segrest routes because the Segrest parties no longer support them. It also does not include Staff's alternate route that was proposed only if the Kendall to Gillespie project was built.

³ The Alliance for A3 has changed "Staff MK 15" from "Opposes" to "Alternate Preference" since the writing of their reply brief.

Route Preferences by Party²

Party	MK 13 (LCRA Pref)	MK 15 (Wnzl Pref)	MK 15A (Wnzl 2)	Staff MK15	MK 22	MK 23	MK 24	MK 32	MK 33	MK 61 (MK 15 Mod. Wnzl Pref)	MK 62 (Mod MK 15 Modified PUC Staff)
CLEAR VIEW ALLIANCE											
CYH RANCH											
DAVID SEGREST											
FREDERICKSBURG RIVER ROAD INTERVENORS											
GILLESPIE CO/CTY FREDERICKSBURG											
HARVEY M. BOERNER											
INTERVENOR AHMAD FAKHR											
JOHN KINNEY KANE AND TYRA COX KANE											
JUNCTION 1090											
KEITH SHARPE											
KERRVILLE PARTIES											
LCRA											
MCGINLEY L- RANCH & ARMSTRONG											
NANCY LIND											
P-LINE INTERVENTION ASSOCIATION											
PAUL MEEK											
RAFTER AKA SABA											
SCHAEFFER RANCH ⁴											
SCYTHIAN											
SETTLER RIDGE GROUP											
SIX MILE RANCH											
STAFF											
STONEHENGE ⁵											
TEXAS HISTORICAL COMMISSION											
TIERRA LINDA											

⁴ Schaeffer Ranch supports "MK33 (the '277/I-10 Route') if it can be constructed without any underground portions in the vicinity of the Kimble County Airport." Schaeffer Ranch supports Staff MK15 "in the event that the Commission determines that the 277/I-10 Route is too expensive to adopt."

⁵ Stonehenge "opposes any route which includes Link c13b and supports MK61 or MK62." Initial Brief of Stonehenge Properties, LP, at 1.

Route Preferences by Party²

Party	MK 13 (LCRA Pref)	MK 15 (Wnzl Pref)	MK 15A (Wnzl 2)	Staff MK15	MK 22	MK 23	MK 24	MK 32	MK 33	MK 61 (MK 15 Mod. Wnzl Pref)	MK 62 (Mod MK 15 Modified PUC Staff)
TIMOTHY H. BANNWOLF, ET AL											
TRIPLE OAKS											
TPWD											
VICTORIA ANDERSON											
WALTER SCOTT MCGREGOR											
WEINZIERL											

Key	
OPPOSES	
SUPPORTS	
ALTERNATE PREFERENCE	
NEUTRAL/NOT MENTIONED	

IV. PROJECT BACKGROUND

The overall Commission Competitive Renewable Energy Zone (CREZ) process that led to the Proposed Project in the Application consisted of the (1) Commission's selection of the CREZ areas (PUC Docket No. 33672), (2) the selection of the transmission plan to support the movement of wind energy from those areas (PUC Docket No. 33672), and (3) the Commission's selection of

transmission service providers to implement the transmission plan (PUC Docket Nos. 36146, 35665, and 37928).⁶

The need for the CREZ Transmission Plan (CTP) projects, including the endpoints for the new transmission lines, was established in Docket No. 33672. In Docket No. 35665, Order on Rehearing (issued May 15, 2009, Conclusion of Law No. 10), the Commission found that the CREZ transmission projects are exempt from addressing the need criteria in PURA § 37.056(c)(1) and (2). More recently, in Docket No. 37928, Order on Rehearing (issued February 25, 2010, Conclusion of Law No. 12), the Commission re-stated that the CREZ transmission projects are exempt from addressing the need criteria in PURA § 37.056(c)(1) and (2).⁷

In Docket No. 33672, the Commission analyzed and considered three critical ERCOT studies of transmission plans for various wind generation levels and analyzed wind generation impact on ERCOT ancillary service requirements. As a result, the Commission identified five specific geographic areas as “Competitive Renewable Energy Zones.” The Commission also examined four scenarios of wind generation that could be installed in these CREZ areas and considered a set of transmission plans for each of the scenarios to be implemented. After the Commission selected the so-called “Scenario 2” and its associated transmission plan as the most appropriate level of wind generation and transmission capacity to implement the CREZ goals, this resulted in the identification of over 100 transmission projects to be constructed. Based on its CREZ Transmission Optimization (CTO) study results, ERCOT determined that this set of projects will maintain curtailment of wind generation below 2.3 percent.⁸

⁶ *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (October 7, 2008); *Issues Related to Default Projects Severed from No. 35665*, Docket No. 36146, Order (November 6, 2008); *Commission Staff's Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing (May 15, 2009); *Priority Projects Severed from Docket No. 37902*, Docket No. 37928, Order on Remand (February 25, 2010); LCRA TSC Ex. 6, at 11.

⁷ LCRA TSC Ex. 1 at 20; LCRA TSC Ex. 6 at 9.

⁸ LCRA TSC Ex. 6 at 12-13.

Included in the Commission-approved transmission plan were 13 system improvements that the Commission determined to be of high priority (Priority Projects). These projects were designated as Priority Projects because, in addition to facilitating the CREZ goals, these projects are critical in relieving current congestion that is hampering the delivery of existing generation to the ERCOT grid. One of these Priority Projects, the McCamey D to Kendall 345-kV double-circuit transmission line, has been identified by ERCOT on several occasions (most recently on September 24, 2010) as a critical element to the performance of the overall CTP.⁹

The Commission's goal throughout the CREZ process was to ensure delivery to customers of the energy generated by renewable resources in the CREZ in a manner that is most beneficial and cost-effective to the customers.

The electric customers include all electric consumers within the ERCOT region including those located in the Hill Country as well as the broader Central Texas area.¹⁰

Staff initiated Docket No. 35665 to select the TSPs to construct the non-default CREZ projects. The Proposed Project includes two of the system improvements listed in the CTP selected in Docket No. 33672. LCRA TSC was ordered to build these two projects by the Commission in Docket No. 35665. Specifically, in the Order on Rehearing in Docket No. 35665 (May 15, 2009), the Commission lists the Proposed Project (composed of two CREZ Priority Projects) which is the subject of this CCN Application. The Commission later affirmed this assignment to LCRA TSC when it severed the 13 CREZ priority projects into Docket No. 37928, for the purpose of specifically assigning the 13 CREZ priority projects (February 25, 2010). In so doing, the Commission emphasized that the severance is "necessary to facilitate the processing of the [priority project CCN applications] most expeditiously." LCRA TSC's Proposed Project is included in Ordering Paragraph No. 1 and associated Attachment B of Docket No. 37928.¹¹

⁹ LCRA TSC Ex. 6 at 13; LCRA TSC Ex. 13, Ex. SG-1R.

¹⁰ LCRA TSC Ex. 6 at 14.

¹¹ LCRA TSC Ex. 6 at 14-15.

ERCOT's CTO Study assumed 137 miles of transmission line for the project. This is reasonably consistent with the range of overall route length indicated in LCRA TSC's proposed alternative routes. Due to the critical nature of the McCamey D to Kendall 345-kV double-circuit transmission line to the overall CTP performance, route length was an important factor affecting the routing options recommended by LCRA TSC in this CCN Application for the transmission line section connecting the McCamey D and Kendall endpoints. For this project, excessive length will detrimentally affect the ability of the transmission line to perform the function assigned it by ERCOT in its CTO Study.¹²

The endpoints for project were identified by ERCOT, specified in the CTO Study report as are required to meet the cost-effectiveness of the overall CTP, and approved by the Commission in its Final Order in Docket No. 33672.¹³

The McCamey D Station is an appropriate endpoint because it is a necessary switching station to connect transmission lines in the immediate area from and to other locations. Also, the McCamey D Station is located in an area near a CREZ and provides effective and efficient service as a CREZ hub to interconnect wind generation facilities. The McCamey D Station is also part of an approved Certificate of Convenience and Necessity (CCN) (*i.e.*, the Twin Buttes to McCamey D single-circuit double-circuit-capable 345-kV transmission line approved in Docket No. 37778).¹⁴

The existing Kendall station provides excellent CREZ transmission line endpoints for integrating the bulk power delivery transmission lines into the load-serving network. As ERCOT explained in the CTO Study, "each of the plans developed as part of this study has been evaluated on how cost-effectively it is able to collect wind from the five CREZ areas and move that generation to load centers." There are no other stations in the immediate area of each of these stations that provide this level of existing infrastructure.¹⁵

¹² LCRA TSC Ex. 6 at 16.

¹³ LCRA TSC Ex. 6 at 10.

¹⁴ LCRA TSC Ex. 6 at 10-11.

¹⁵ LCRA TSC Ex. 6 at 11.

LCRA TSC's Proposed Project does not include the 50 percent series compensation project identified in the CTP for the McCamey D to Kendall 345-kV transmission line. Per the Final Order in Docket No. 37928, that project will be constructed by Electric Transmission Texas (ETT). Because the length and location of the McCamey D to Kendall 345-kV transmission line is also an important factor related to the series compensation, LCRA TSC will timely communicate the routing results of the Proposed Project to both ERCOT and ETT.¹⁶

With the exception of certain combinations of transmission line routes addressed below, both portions of the Proposed Project in LCRA TSC's CCN Application (*i.e.*, McCamey D to Kendall, and Kendall to Gillespie) meet the requirements of the ERCOT CTO Study and comply with the Order on Rehearing in PUC Docket Nos. 35665 and 37928 for constructing CREZ-related facilities. Consistent with the Commission's goals for the CREZ program and P.U.C. SUBST. R. 25.174, LCRA TSC's Proposed Project provides: long-term, cost-effective solutions that are consistent with the Final Order in Docket No. 37928; transmission facilities that are consistent with specifically-associated ERCOT recommendations in the Commission-approved CTP; and transmission facilities that are constructed and placed in service as soon as possible to alleviate existing and growing constraints in delivering wind generation from West Texas to loads in ERCOT.¹⁷

LCRA TSC's proposed station designs at McCamey D and Kendall will be of the high reliability configurations required for terminations of CREZ transmission lines, such as a ring bus or breaker-and-a-half arrangement designated in the CTO Study.¹⁸

On December 1, 2010, the Commission determined that the Kendall to Gillespie portion of the transmission line would be replaced with a cost-effective alternative that does not require the construction of a transmission line between the Kendall and Gillespie substations at this time.¹⁹

¹⁶ LCRA TSC Ex. 6 at 16-17; *see also* LCRA TSC Ex. 5 at 6.

¹⁷ LCRA TSC Ex. 6 at 17; *see also* LCRA TSC Ex. 1 at 7; LCRA TSC Ex. 2 at 10, 28-29, 31.

¹⁸ LCRA TSC Ex. 5 at 14-15.

¹⁹ *Proceeding to Determine Whether to Modify the CREZ Transmission Plan*, Docket No. 38577, Final Order

Therefore, this PFD does not address the routing issues between those substations. However, most of the links originally filed between those two substations could also be used if the Commission determined to route the transmission line along any of the P-Lines. Because the ALJs recommend against all the P-Lines, none of the links from Kendall to Gillespie are recommended.

V. PRELIMINARY ORDER ISSUES

A. Preliminary Order Issue No. 1

Is LCRA TSC's Application to amend its CCN adequate? Does the Application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?

In Order No. 5, the ALJs concluded that the Application was materially sufficient. As part of the evidence concerning material sufficiency, Staff concurred that the Application contains an adequate number of reasonably differentiated routes for the Commission's evaluation.²⁰ LCRA TSC provided 60 primary alternative routes for the MK Project.²¹

LCRA TSC's Application provided an adequate number of routes and otherwise complies with all applicable statutory and regulatory requirements. Several parties (Settler's Ridge, Fredericksburg River Road Intervenors, and the Fosters) filed motions challenging the adequacy of the routes proposed in the Application.²² These motions were denied by the ALJs in Order Nos. 5, 7, and 10, respectively.

B. Preliminary Order Issue No. 2

Did the notice provided by LCRA TSC comply with P.U.C. PROC. R. 22.52(a)?

(December 1, 2010).

²⁰ PUC Staff Ex. 2 at 19; PUC Staff Ex. 1 at 18-19. There are at least 100 possible routes (using noticed links) for the KG Project and at least 20,000 possible routes (using noticed links) for the MK Project. LCRA TSC Ex. 2 at 27.

²¹ LCRA TSC Ex. 9 at 32. LCRA TSC designated the Kendall to Gillespie lines as the KG Project and the McCamey D to Kendall lines as the MK Project.

²² See Docket No. 38354, Settler's Ridge Motion on Route Adequacy (Aug. 11, 2010), Interchange Item No. 684; Fredericksburg River Road Intervenors' Motion on Route Adequacy (Aug. 23, 2010), Interchange Item No. 880; Motion for Review of the Adequacy of Routes Proposed Herein (Sept 3, 2010), Interchange Item No. 1743.

In accordance with P.U.C. PROC. R. 22.52, LCRA TSC provided notice to directly affected landowners, utilities, city governments, and county governments on July 28, 2010;²³ re-mailed notice to certain landowners for whom the original notice was returned to LCRA TSC on or before August 17, 2010, or for whom LCRA TSC subsequently learned of different ownership of a directly affected property;²⁴ provided notice by publication in newspapers having general circulation in the counties where the CCN is being requested on August 5 and 13, 2010;²⁵ provided copies of the Application and the Environmental Assessment and Alternative Route Analysis (EA) compiled for this project to representatives of TPWD,²⁶ and held public open houses on May 4, 5, 7, 11, 12, and 14, 2009 and February 16, 17, 18, 22, 23, and 24, 2010.²⁷

On August 20, 2010, Staff filed Comments in Response to Order No. 1. In the Comments, Staff reviewed LCRA TSC's Affidavit of Notice and Supplemental Affidavit of Notice as well as its Publishers Affidavits and found them sufficient and compliant with the notice provisions set out in P.U.C. PROC. R. 22.52(a) and Order No. 1.²⁸ On August 23, 2010, the ALJs issued Order No. 5, which found the Application sufficient and free of any material deficiencies. LCRA TSC has complied with the requirements of P.U.C. PROC. R. 22.52(a)(1)-(4).

ChiRoss Intervenors argued that notice was improperly served upon them because they are not traditional directly affected landowners under P.U.C. PROC. R. 22.52(a)(3). LCRA TSC argued, however, that the Commission's rules present the minimum notice required; nothing in the rules preclude the noticing of additional property owners in order to provide the Commission with flexibility in its selection of a final route.²⁹ Recognizing this fact, the ALJs issued Order No. 16 finding that either the ALJs or the Commission could approve a route on noticed property that is not

²³ LCRA TSC Ex. 4

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ LCRA TSC Ex. 2 at 13-14.

²⁸ Comments in Response to Order No. 1 On Compliance With Notice Requirements (Aug. 20, 2010), Interchange Item No. 822.

²⁹ LCRA TSC Ex. 12 at 7.

directly affected by a proposed route, and that absent a stipulation, the ALJs would not grant a motion to dismiss on grounds that the project would not directly affect an intervenor's property.

C. Preliminary Order Issue No. 3

Does the Application meet the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3)?

In Order No. 5, the ALJs found that the Application is sufficient and contains no material deficiencies. No party has challenged the sufficiency of this ruling. LCRA TSC's Application has met the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3).

D. Preliminary Order Issue No. 4

Did LCRA TSC submit the CCN application in compliance with the Orders in Docket Nos. 37928 and 36802 designating it as a CREZ Priority Transmission Plan facility? If not, should the Commission revoke the designation awarded to LCRA TSC and select another entity for the CREZ Priority Transmission Plan facility at issue in this docket pursuant to P.U.C. SUSST. R. 25.216(f)(1)?

The Application was submitted in compliance with Docket No. 35665 designating it as a CREZ Priority Transmission Line Project that was filed in accordance with the sequence of filing ordered in Docket Nos. 36801 and 36802.³⁰

LCRA TSC's proposed double-circuit or double-circuit-capable 345-kV transmission lines between the McCamey D and Kendall stations are a part of the ERCOT CREZ Transmission Plan ordered by the PUC in Docket No. 33672.³¹ The lines are "priority projects" designated as such by the PUC because they help to relieve congestion restricting existing wind generation in addition to

³⁰ Staff Ex. 2 at 13.

³¹ Docket No. 33672, Order on Rehearing (October 7, 2008) at 39-47 (FOF 117-178) 48 (COL 6-7), and 49 (Ordering Paragraph 2). Double-circuit-capable structures will be constructed for the McCamey D to Kendall and Kendall to Gillespie CREZ projects. As required by the CREZ Transmission Plan (CTP) the McCamey D to Kendall CREZ Project will be built as a double-circuit line while the CTP calls for the Kendall to Gillespie CREZ Project to be constructed initially as a single-circuit project with a second circuit to follow sometime in the future.

performing the CREZ function of supporting the development of new wind generation.³² In Docket No. 35665, the PUC ordered LCRA TSC to build the McCamey D to Kendall and Kendall to Gillespie lines.³³ As stated by the PUC in its Order in Docket No. 35665³⁴ and its Order of Referral and Preliminary Order in this docket,³⁵ PURA Sections 39.203(e) and 39.904(h) exempt CREZ facilities from CCN requirements addressing need, adequacy of existing service, effects on the applicant or other utilities, and probable improvement of service or lowering of cost to customers.³⁶

In addition to CREZ-related benefits, the line is intended to benefit the general area of their location by providing increased transmission support to meet growing needs in the Central Texas and Hill Country areas.³⁷ Meeting increasing transmission needs in the Hill Country region was a benefit cited by ERCOT in its CTO Study.³⁸

³² *Id.* at 42 (FOF 136).

³³ Docket No. 35665, Order on Rehearing (May 15, 2009) at p. 50 (FOF 120).

³⁴ *Id.* at p. 60 (COL 10).

³⁵ Order of Referral and Preliminary Order at 7-9.

³⁶ TEX. UTILITIES CODE §§ 39.203(e) and 39.904(h).

³⁷ LCRA TSC Ex. 6 at 26.

³⁸ *Id.* at 29-30.

E. Preliminary Order Issue No. 5

Will completion of the project proposed by LCRA TSC in this docket accomplish the intended result for the CREZ project designated as "McCamey D to Kendall to Gillespie 345-kV Transmission Line Project" in the CREZ Transmission Plan and ordered by the Commission in Docket Nos. 37928 and 36802?

The Application will accomplish the intended results for the CREZ priority project designated in the CREZ CTO and ordered by the Commission in Docket Nos. 35665, 37928, and 36802.³⁹ In Docket No. 33672, the Commission found that certain lines are critical to relieve the congestion that is hampering the delivery of existing wind-powered energy to the grid and designated them as priority projects.⁴⁰ In an effort to relieve this congestion, the Commission specifically required LCRA TSC to build new, double-circuit 345-kV line running from the McCamey D Station to the Kendall Station and then a double-circuit-capable, single-circuit 345-kV line from the Kendall Station to the Gillespie Station.⁴¹

A number of intervenors asserted that the need for the project is not demonstrated and that a transmission line owned by NextEra, the Horse Hollow Generation Tie, LLC (HHGT) could provide a substitute for the Project. On September 24, 2010, ERCOT submitted a letter summarizing the study that it had conducted at request of the Commission regarding the need for the MK to KG lines.⁴² ERCOT's study concluded that (a) the MK portion of the project has no viable alternative and must remain part of the CREZ transmission plan; (b) the HHGT is not a viable alternative to the MK CREZ priority transmission line, and (c) the KG project could potentially be avoided with a less expensive alternative of installing certain infrastructure improvements.⁴³ In Order No. 12, the ALJs held that, unless directed otherwise by the Commission, they would not consider the issue of whether the HHGT line could be used in the place of the MK Project because (1) that is an issue of

³⁹ PUC Staff Ex. 2 at 13; Staff Ex. 1 at 11.

⁴⁰ Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Order on Rehearing (Oct. 7, 2008) at 12.

⁴¹ LCRA TSC Ex. 1, Attachment 1 (EA) at 1-5.

⁴² LCRA TSC Ex. 13 (Ex. SG-1R).

⁴³ *Id.*

need, which is not to be considered in this proceeding, and (2) ERCOT's study found that there is no viable alternative to this line.⁴⁴ In Order No. 14, the ALJs ordered the direct testimony of HHGT witnesses to be struck in accordance with LCRA TSC's objections.⁴⁵

F. Preliminary Order Issue No. 6

Which proposed transmission line route is the best alternative, weighing the factors set forth in PURA § 37.056(c)(4), excluding (4)(E), and P.U.C. SUBST. R. 25.101(b)(3)(B)?

After weighing the factors, Staff MK15 is the best alternative because it best balances all of the relevant criteria. While MK32 and 33 are better choices environmentally, they sacrifice cost and habitable structures to parallel existing highway.

1. The Effect of Granting the Certificate on LCRA TSC and Any Electric Utility Serving the Proximate Area

Although included in CCN proceedings, this issue is specifically excluded from CREZ CCN proceedings.⁴⁶

2. Community Values

Although "community values" is not formally defined in Commission rules or in PURA, the term has been described as a "shared appreciation of an area or other natural or human resource by a national, regional, or local community."⁴⁷ The study area in this case and the length of the transmission line from McCamey D to Kendall are so large that there is no consensus on community values.

To address and consider community values, LCRA TSC conducted 20 public meetings on

⁴⁴ Order No. 12 (Oct. 1, 2010), Interchange Item No. 2657, at 2-3.

⁴⁵ Order No. 14 (Oct. 12, 2010), Interchange Item No. 2772, at 4.

⁴⁶ PURA §§ 39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2).

⁴⁷ LCRA TSC Ex. 1, EA at 2-55.

May 4, 2009, May 5, 2009, May 7, 2009, May 11, 2009, May 12, 2009, and May 14, 2009. In addition, LCRA TSC conducted public meetings on February 15 and February 16, 17, 18, 22, 23, and 24, 2010.⁴⁸ These meetings provided information to LCRA TSC regarding community values by participants who provided a ranking of a series of routing criteria. LCRA TSC further took into account expressions of community values in a review of the questionnaires, letters, meetings, phone calls, and other public input it has received.⁴⁹ LCRA TSC received additional information about community values at the Technical Conference held on September 1, 2010, and at the Settlement Conferences it held on September 20, 21, and 22, 2010.

Four strong indications of community values arose during the pendency of this case: the effect of the line on the Texas Hill Country; the effect of the line on habitable structures, particularly in developed areas, such as cities; the effect on rural residential subdivisions; and the use of monopoles. Almost all intervenors testified that they did not want the line on their property and it was better to place the line on someone else's property (or in another county). The ALJs do not consider those arguments to be representative of community values. It is understood that most people would prefer not to have the line routed across their land or through their town, but that is not helpful for determining whether the community as a whole or larger portions of the community share certain values.

a. Texas Hill Country

Avoiding "central" routes that would cut through undisturbed areas of the Texas Hill Country is one shared community value relevant to this proceeding. It was one reason for the delay of this proceeding for several months so that the study area could be expanded to include the existing AEP 138-kV line to the north (now paralleled by the P-Lines) and the US 277/I-10 corridor to the south.⁵⁰ As Chairman Smitherman explained at the September 24, 2009 Open Meeting:

⁴⁸ LCRA TSC Ex. 2 at 12-13.

⁴⁹ LCRA TSC Ex. 2 at 11.

⁵⁰ WR Ex. 8 at 4; LCRA TSC Ex. 2 at 21.

I do think that some of the letters raised some legitimate concerns about making sure that we follow the statute and follow our rules which say, hey, take a look at existing corridors, take a look at existing rights-of-way, **take a look at existing infrastructure. Can you run along these rather than going straight across virgin ranch territory. . . .**⁵¹

Thus, the Commission has already acknowledged public support in favor of using existing compatible corridors, rather than impacting areas of the Hill County, as MK13 does.

The questionnaires received by LCRA from the members of the community in the McCamey D to Kendall study area consistently ranked paralleling existing compatible ROW among the highest factors in importance, if not *the* highest factor.⁵² LCRA witness Sarah Morgenroth, who was responsible for overseeing the public involvement program for this project, including coordinating open houses and meetings with governmental officials, confirmed that there has been a great deal of public interest in developing a route along the I-10 corridor.⁵³ As Ms. Morgenroth testified, “[t]here was a lot of comment about preserving the Hill Country.”⁵⁴

Further, one of the parties in this case, CVA, which represents approximately 240 landowners in this proceeding, has promoted a route that avoids traversing the “heart of the Hill Country” in favor of a path that follows existing compatible corridors, such as the US 277/I-10 corridor.⁵⁵ CVA’s lead landowner witness, Bill Neiman, testified that one goal in forming CVA was to form a large group of concerned landowners to speak with a common voice.⁵⁶ He also testified that he realized the line may cross or come close to his land, but decided he would have to be “at peace” with that possibility because his goal was to do his best to keep the line from running through the Hill Country.⁵⁷ There is much evidence in this proceeding that many parties hold

⁵¹ WR Ex. 8 at 4 (emphasis added).

⁵² See generally LCRA TSC Ex. 1, Attachment 1 at Section 6.

⁵³ Tr. at 346; LCRA TSC Ex. 2 at 4, 20-21.

⁵⁴ Tr. at 164.

⁵⁵ CVA Ex. 9 at 2-3.

⁵⁶ Tr. at 629-630; CVA Ex. 9 at 5.

⁵⁷ Tr. at 679; see also CVA Ex. 9.

community values that support using existing compatible corridors such as I-10, and minimizing the impact to the Texas Hill Country.

Yet MK13, the preferred route, would cut a new ROW through the Hill Country and would parallel few property lines. A large number of intervenors who want to preserve the nature of the Hill Country vehemently oppose the preferred route and all other central routes. Because it is a central community value, the ALJs recommend against the preferred route and against the other central routes. Routing the line parallel to existing highways that have already scarred the landscape and are not natural or scenic is a better choice to address the values expressed by many, if not most of the intervenors. Staff MK15 parallels I-10 for much of its length, coming off of the central routes at Ranch Road 1674, travelling south to hit I-10 west of Junction before moving east. The ALJs recommend the Commission approve Staff MK15.

b. Habitable structures

In contrast to the community values held by those intervenors advocating routes that do not run through the Hill Country, many intervenors expressed concern about the line running in close proximity to a large number of habitable structures and also running through Kerrville and other cities, and running close to Fredericksburg.

The parties concerned with habitable structures and city development oppose all routes that travel through Kerrville, citing limiting impacts to residences as a strongly held community value. Maximizing the distance of the proposed line from residences/habitable structures was also one of the most highly ranked values in the questionnaires received by LCRA.⁵⁸ While routes MK32 and 33 best satisfy the community value of paralleling existing compatible corridors, they also have some of the highest numbers of habitable structures within 500 feet of the centerline. Routes MK32 and 33, with 151 and 153 impacted habitable structures respectively, would each affect more than

⁵⁸ See LCRA TSC Ex. 1, EA at 6-5 to 6-58.

eight times as many habitable structures as Route MK13.⁵⁹

The ALJs conclude that, neither Route MK13 nor routes MK32 or 33 are the best overall routes in terms of community values. Rather, the evidence shows that Staff MK15 best satisfies the expressed community values because it parallels a substantial length of existing compatible corridors, while impacting relatively few habitable structures.⁶⁰ Although the various MK15 route options do not parallel as great a length of existing corridors as routes MK32 and 33, they impact vastly fewer habitable structures and cost significantly less.⁶¹ Likewise, while Staff MK15 impacts more habitable structures (55) than Route MK13 (18), it parallels significantly more existing compatible ROW and is only 10 miles longer.⁶² If Staff's route is used with a variation that continues the line along I-10 through Kerrville, it would impact 128 habitable structures. This variation is MK62.

The communities of Mason, Fredericksburg, and Kerrville provided testimony that their communities did not want the transmission line through their towns.⁶³ Staff MK15 avoids the communities of Eldorado, Sonora, Mason, Menard, and Fredericksburg.⁶⁴ Staff MK15 also circumvents the community of Kerrville and avoids 99 habitable structures (including 17 within the ROW).⁶⁵ Although avoiding Kerrville, Staff MK15 parallels a gas pipeline through Tierra Linda and affects 12-14 habitable structures as opposed to the 99 in that subdivision, which would not be affected by MK32 or 33.⁶⁶

c. Cities

⁵⁹ LCRA TSC Ex. 26.

⁶⁰ See *id.*; LCRA TSC Ex. 1, EA at 6-85 to 6-92.

⁶¹ *Id.*

⁶² *Id.*; LCRA TSC Ex. 1, EA at 6-85 to 6-92.

⁶³ Kerrville Ex. 1 at. 4; P-Line Ex. 1 at 2; P-Line Ex. 12 at 2; Tr. at 715; 718-719.

⁶⁴ Tr. at 719.

⁶⁵ LCRA TSC Ex. 20 at 6-85 to 6-93.

⁶⁶ Staff Ex. 1 at 25; Tr. at 563-564, 1059, 1167.

Kerrville, Kerr County, and Gillespie County intervened in this proceeding on behalf of their citizens. The elected officials of Kerrville and Kerr County appeared for cross-examination at the hearing presented testimony on behalf of their citizens and expressed the community values of their constituents.⁶⁷ Kerrville Mayor Wampler and Kerr County Judge Tinley expressed the will of their constituencies in Kerrville and Kerr County for the proposed transmission line to avoid the growing population centers of Kerrville and northern Kerr County.⁶⁸

The Kerrville community is currently expanding along I-10.⁶⁹ The City has made significant expenditures in order to ready the I-10 corridor for further development.⁷⁰ The Kerrville Public Utility Board (KPUB) also has spent over \$1 million to extend utility infrastructure to the areas along I-10, in the vicinity of Links Y16, Y17b, Y18, Y19b and Y20, which are links in routes MK32, 33, 61, and 62.⁷¹

Kerr County is also experiencing growth just north of I-10.⁷² Kerr County Judge Tinley identified the Whiskey Canyon subdivision and other communities that would be affected by Links c1a, b57a, c3, c9, c6, and c8, some of which are in routes MK15 and Staff MK15.⁷³ Property owners from the Whiskey Ridge subdivision also intervened individually to express their concerns. Jerry Ahrens, Kenneth and Carol Swanson, and Michael and Margie Schwartz all testified that construction of the proposed transmission line along Link c1a would negatively impact their properties, would not comport with the community values of Whiskey Ridge, and would negatively

⁶⁷ Tr. at 241, 718. The parties were able to waive cross-examination on many witnesses who pre-filed testimony. Therefore, many witnesses whose testimony is part of the record of this proceeding did not testify live at the hearing.

⁶⁸ Kerrville Ex. 1 at 4; Kerr County Ex. 1 at 5-8.

⁶⁹ Atkisson Ex. 1 at 7; Kerrville Ex. 1 at 5.

⁷⁰ Kerrville Ex. 1 at 5-10, Attachments A-F.

⁷¹ KPUB Ex. 1 at 6.

⁷² Kerr County Ex. 1 at 5-9, Attachments A-H.

⁷³ Kerr County Ex. 1 at 6-7.

impact property values.⁷⁴ Thus, it is apparent that the existing communities in Kerr County value the placement of the proposed transmission line away from the ongoing development in Kerrville and northern Kerr County.

Kerrville and Kerr County also intervened to present the special concerns they share as local governments. Specifically, the placement of the proposed transmission line in the areas of proposed major developments will impair their abilities to raise much-needed funds through property taxes. Mayor Wampler testified that:

[C]onservatively, that the impact -- the economic impact by the line going along I-10 as proposed would have an effect of over half a million dollars in taxable -- future taxable dollars. That equates to 32 percent of our current taxable ad valorem value. I think that once that impact is felt, it's perpetual and would be extremely negative and damaging to our future as a city.⁷⁵

Kerr County Judge Pat Tinley described similar negative potential impacts on Kerr County. He demonstrated that the land values of the developed parcels along I-10 are valued substantially higher than the parcels that have not yet been developed.⁷⁶ City and county governments raise funds for civil services through property taxes; reducing the property values along I-10 and northern Kerr County will lower the funds available for law enforcement, road maintenance, emergency services and other civic services provided to residents of the County.⁷⁷ The communities of Kerrville and Kerr County, through their elected officials, have expressed their desire for selection of a route that avoids the use of Links Y16, Y17b, Y18, Y19b, Y20, c1a, b57a, c3, c9, c6 and c8. Staff MK15 uses only one of those links, c6.

Given the competing community concerns of avoiding the Hill Country versus avoiding habitable structures and cities, Staff MK15 strikes a good balance between those interests. However, following I-10 through Kerrville permits the line to continue along a compatible corridor.

⁷⁴ Ahrens Ex. 1 at 1-2; Swanson Ex. 1 at 1-2; Schwartz Ex. 1 at 2-3.

⁷⁵ Tr. at 718-719.

⁷⁶ Kerr County Ex. 2 at 4-5, Attachments A and B.

⁷⁷ Kerr County Ex. 1 at 5-6.

Those routes would affect more habitable structures and may require moving structures that are in the ROW, but they would avoid the rural residential subdivision of Tierra Linda.

d. Other Community Values

Tierra Linda Ranch

Routing along I-10 but avoiding Kerrville would route the line through Tierra Linda. The subdivision currently has a pipeline easement through it, and LCRA TSC proposes to route the line parallel to that existing easement. The owners of the 15 directly-affected habitable structures intervened as did the Homeowners' Association and other residents and property owners in the subdivision even if they were not considered to be directly affected.⁷⁸ They all oppose the line running through their subdivision and note that a pipeline ROW may not be compatible with a transmission line because the impact of the pipeline easement is minimal in comparison.

P-Line Intervenor

The P-Line intervenors also express concern for the resources of the Hill Country. They argue that the existing 138-kV line is old and small. The proposed line would be much larger and more intrusive. The line would cross ranch land that has been held in the same family for generations. P-Line Intervenor note that the communities along the P-Lines are rural with shared values for preserving cultural resources and history.⁷⁹ Because the P-Line routes perform poorly on so many of the routing criteria, they are not recommended as discussed throughout this PFD.

Fort McKavett

Several intervenors note the community values concern about Fort McKavett.⁸⁰ The issues

⁷⁸ Unlike in other CCN cases, LCRA TSC chose not to object to requests to intervene from individuals who would not be considered directly affected landowners under the Commission's rules.

⁷⁹ P-Line Initial Brief at 5.

⁸⁰ Six Mile Initial Brief at 11-12; THC Initial Brief at 3; Saba Initial Brief at 12-13.

relating to the routes close to and visible from Fort McKavett are addressed in the sections related to historical resources. The recommended route does not affect Fort McKavett.

e. Monopoles

A number of intervenors have requested the use of steel and spun concrete poles, commonly called “monopoles,” for the proposed project. LCRA TSC filed its application proposing lattice structures to be consistent with its proposal in Docket No. 35665 and because lattice is the most cost-effective structure type.⁸¹ As a result, its base cost estimates for routes and segments assume lattice structures.⁸²

Regardless of the type of structures used, the double-circuit-capable 345-kV structures required for the project will be visible to landowners and the public. Because LCRA TSC recognizes the support expressed for monopole structures, it also included detailed cost information for a variety of structure types, including mixtures using both steel poles and spun concrete poles.⁸³ LCRA TSC has repeatedly stated its position that any of its proposed structures are acceptable and will be used if the PUC determines such structures are preferred. The ultimate decision as to structure type necessarily rests with the PUC and its balancing of costs and benefits.⁸⁴

The ALJs support the use of monopoles to the extent it is cost-effective and particularly in any areas with denser population, such as along I-10 though population centers such as Sonora, Junction, and Kerrville if the line is ultimately routed through those communities. There was strong support from almost all intervenors for the use of monopoles, which tends to show that the use of monopoles is a shared community value.

Along Staff MK15, the ALJs support and recommend monopoles through Tierra Linda.

⁸¹ LCRA TSC Ex. 7 at 12-17.

⁸² *Id.* at 19 and CDS-3; LCRA TSC Ex. 14 at 5.

⁸³ LCRA TSC Ex. 7 at 13, 18-19; LCRA TSC Ex. 14 at 5-12, CDS-2REB, and CDS-3REB.

⁸⁴ LCRA TSC Ex. 14 at 12.

3. Recreation and Park Areas

LCRA TSC notes that avoiding parks and recreational areas was a consideration in designing the routes proposed in the Application. PBS&J reviewed U.S. Geological Survey topographic maps, Texas Department of Transportation (TxDOT) county highway maps and federal, state, and local maps, the TPWD “Texas Outdoor Recreation Inventory,” the Texas Outdoor Recreation Plan, recent aerial photography, and conducted a limited field reconnaissance. As a result of that review, PBS&J identified two parks or recreation areas located within 1,000 feet of the preferred route MK13 centerline, Flat Rock Ranch, and a TxDOT roadside park. Other notable recreation areas within the study area are the Old Tunnel Wildlife Management Area (Old Tunnel WMA) and Fort McKavett State Historical Site, one of the best preserved and most intact examples of a Texas Indian Wars military post, both addressed below. Of the other 59 primary alternative routes, 53 are located within 1,000 feet of additional parks or recreation areas (with a few routes within this range of as many as seven such areas).⁸⁵

Staff notes that one park/recreation area is crossed by 27 of the proposed routes, including MK13 and Staff MK15. The lines pass within 1,000 feet of the Flat Rock Ranch, which features mountain biking and camping areas, paralleling the eastern side of the Horse Hollow generation tie 345-kV transmission line. Only one park/recreation area is within 1,000 feet of the centerline of MK13 and Staff MK15. MK32 and MK33 run within 1,000 feet of six and seven parks/recreation areas, respectively.⁸⁶

a. Old Tunnel Wildlife Management Area

TPWD is the owner and operator of the 16.1 acre Old Tunnel WMA, located in Kendall County. TPWD opposes all routes that use Links A3 or O4, which run within 500 feet of the Old Tunnel area’s western boundary. The only route in contention that uses either Link A3 or O4 is

⁸⁵ LCRA TSC Ex. 1, Application at 40, and EA at 2-64, 2-68, 5-24; LCRA TSC Ex. 9 at 26; LCRA TSC Ex. 20, Ex. RRR-3R (rev. Table 6-1).

⁸⁶ Staff Ex. 1 at 33; LCRA TSC Ex. 23 at 1; LCRA TSC Ex. 1 at 5-23; LCRA TSC Ex. 26.

MK22, which is a P-Line route. Most of the original filed routes that used those links were part of the KG project. Although the KG line is not a part of this proceeding and the ALJs recommend against the P-Line routes, they address TPWD's arguments in the event the Commission considers a route that would impact the Old Tunnel. The Old Tunnel area is comprised of an abandoned railroad tunnel and includes a bat colony of up to three million Brazilian free-tailed bats and three thousand cave myotis -- more mammals than any other Wildlife Management Area in Texas. The Old Tunnel includes nature trails for hiking and bird watching, educational programs, bat watching, and guided nature tours. TPWD estimates that 21,324 visitors visited the Old Tunnel just to watch bats emerge from the tunnel. TPWD estimates the annual economic benefit to the region of at least \$748,000.⁸⁷

TPWD is concerned that the line, if placed on Links A3 or O4, would result in bat mortality and possible abandonment of the colony. As a result of potential harm to the Old Tunnel as an environmental and recreational resource, TPWD opposes any route that uses these links. As discussed in the environmental section below, the ALJs find that TPWD has raised genuine questions about the potential impact of transmission lines on the bat colonies at the Old Tunnel. The ALJs do not recommend a route using any of the links opposed by TPWD regarding the Old Tunnel.

⁸⁷ LCRA TSC Ex. 1, EA at 2-65, Table 4-1; TPWD Ex. 1 at 3, 6, 10, 12; TPWD Ex. 3 at 4; TPWD Ex. 2 at 10.

b. Fort McKavett

A number of intervenors, including the THC and TPWD oppose links that would impact the view shed and historic and aesthetic value of Fort McKavett.⁸⁸ The THC owns and operates the Fort McKavett State Historic Site in Menard County, Texas (Fort). The THC is an agency of the State of Texas, charged with providing leadership and coordination in the field of historic preservation, using its facilities to stimulate the protection of historic resources, and conducting related educational programs. These duties are in furtherance of the THC's mission to protect and preserve the state's historic and prehistoric resources for the use, enjoyment, and economic benefit of present and future generations.⁸⁹

The Fort was designated as a state historic site on May 17, 1968, in order to help preserve its role in history as a federal fort protecting settlers on the mid-19th-century Texas frontier. Fort McKavett is among the most intact, surviving 19th-century frontier military installations in Texas. The Fort is a State Historic Site, as well as a National Historic District listed on the National Register of Historic Places. Fort McKavett is part of TPWD's Great Texas Wildlife Trails, as well as the THC's Texas Forts Trail. The Fort McKavett State Historical Site is also designated a riparian conservation area.⁹⁰

The Fort is located in the vicinity of a number of the north-central routes and segments proposed by LCRA TSC. They are: b16b, b17b, the Z1 and Z2 lines connecting those routes, and the Powell Ranch proposed modification to route/segment b16b, Option 2 (THC Opposed Routes). Although the ALJs recommend against a northern-central route that would impact the Fort, they nevertheless address the THC's arguments in the event the Commission considers these segments.

Thomas Alexander, a THC commissioner and historian explained that for defensive reasons, the Fort was built between 75 and 100 feet above the surrounding terrain. The THC is concerned

⁸⁸ TPWD Ex. 4 at 25; THC Ex. 4 at 5, 8-9; THC Ex. 18; Tr. at 554-555, 584, 645-647, 760-761, 969-970, 972.

⁸⁹ TEX. GOV'T CODE §§ 442.002(a), 442.003, 442.005(j), (l).

⁹⁰ Six Mile Ex. 1 at 7; LCRA TSC Ex. 1, EA at 2-66, 2-67, 2-72; TPWD Ex. 4 at 32.

that transmission towers of up to 180 feet in height would be easily visible from the grounds of the Fort. The towers would range from 1.18 miles (b16b), 1.26 miles (Z1 and Z2), and 1.55 miles (b17b) from the Fort. Mr. Alexander and THC witness Michael Garza, the Fort's site manager, explained that the Fort remains isolated from modern development, with pristine views in all directions; they note that the view from the Fort is much as it was in the mid-nineteenth century. Mr. Alexander testified that it is this ambiance, virtually unchanged for nearly 160 years, that makes the Fort unique and valuable. The Fort hosts living history events, star parties, Boy Scout functions, and visitor tours throughout the year. The THC notes that the isolation and historical character of the Fort contributes greatly to the efficacy of these events. As a result, the THC argues that transmission towers of up to 180 feet in height would directly and negatively impact those view sheds from the Fort, and would likewise negatively impact the Fort's historic character, its isolation, and the overall appeal of the Site.⁹¹

LCRA TSC disagrees, noting that there is no evidence that the proximity and visibility of the line will repel tourists interested in visiting the Fort.⁹² Furthermore, LCRA TSC argues that the THC lacks evidentiary support for its arguments regarding the view shed and impact on the appeal of the Fort. As discussed above, however, THC submitted expert testimony to support its arguments regarding the view shed and historic and aesthetic value of the fort. Also, LCRA TSC acknowledged that the comparative view shed impact of existing cell towers in the vicinity of the Fort would be substantially less than a transmission line of 120 to 180 feet.⁹³ Although the THC did not establish that tourists would avoid the Fort due to the proximity of a large transmission line, LCRA TSC did not conduct a causation analysis either.⁹⁴ While it is unclear what impact, if any, the lines would have on tourism at the Fort, the ALJs agree with the THC that the line would have a negative impact on Fort McKavett's historic character, the Fort's view shed, and the aesthetic values associated with its preservation and isolation.

⁹¹ THC Ex. 18 at 4, 7-8, 12-13 and Ex. 1-17; THC Ex. 4 at 7-9, THC Ex. 1 at RFI Response No. 1-4.

⁹² LCRA TSC Ex. 11 at 11.

⁹³ THC Ex. 18 at 4.

⁹⁴ Tr. at 1358-1359.

c. Camp Sol Mayer

Camp Sol Mayer is a 300-acre Boy Scout camp with 18 permanent buildings. The Boy Scout troops that use Camp Sol Mayer participate in a wide variety of activities, including horsemanship, shooting sports, swimming, canoeing, row boating, climbing/repelling, fishing, soil and water conservation, handicrafts, ecology/nature, camping, first aid, fire safety, mammal study, lifesaving, pioneering and wilderness survival. Additionally, camp sites may be reserved by the public on a space-available basis.⁹⁵

Opponents of segment b17b argue that it would cross the southwest corner of the camp, passing near several camping areas and near where the camp's horses are maintained. ROW clearing for the transmission line on the southwest portion of the camp would eliminate many trees that are along the western boundary line and the San Saba River. The camp would also be impacted by Links Z1 and Z2, which are both in close proximity to the camp.⁹⁶ The ALJs do not recommend any routes that use these links.

d. Tierra Linda Ranch

Tierra Linda Ranch has questioned whether LCRA TSC evaluated a private park that it claims is potentially affected by a proposed link. LCRA TSC argues, however, that private recreation areas such as Tierra Linda's are not included in the PUC's CREZ CCN Application definition of "parks and recreation areas."⁹⁷ LCRA TSC explains that the PUC's consideration of "parks and recreation areas owned by a governmental body or an organized group, club or church" is an objective means to identify park and recreation areas. Without this objective standard, many landowners who use their private property for a variety of private recreational uses could raise this issue and introduce inappropriate subjectivity into the evaluation process.⁹⁸ The ALJs find that

⁹⁵ Saba Group Ex. 3 at 4-5.

⁹⁶ Saba Group Ex. 3 at 4-6.

⁹⁷ Tr. at 1265-1268.

⁹⁸ LCRA TSC Ex. 9 at 27.

LCRA TSC and PBS&J properly identified parks and recreation areas consistent with the Commission's definition. Nevertheless, the ALJs recommend that the Commission consider the line's potential negative impact on the residents' recreational use of their property.

e. Flat Rock Ranch

Flat Rock Ranch is a privately owned mountain biking and camping facility open to the public. The ranch is crossed (for 1.68 miles) by 27 of the alternative routes. The routes parallel the eastern side of an existing NextEra transmission line, which also crosses through the property along its western boundary. LCRA TSC contends that potential interference with recreational activities and impacts to these facilities would be indirect because the mountain bike trails could be spanned by LCRA TSC's transmission line structures. LCRA TSC also argues that visual impacts would be minimal because these routes parallel an existing transmission line.⁹⁹ Staff concluded that the line could be constructed in a way that would not unduly disturb the recreational activities at the property.¹⁰⁰ Considering the existence of the NextEra line, the ALJs agree with LCRA TSC and Staff on this matter.

⁹⁹ LCRA TSC Ex. 1, EA at 5-23 to 5-24.

¹⁰⁰ Staff Ex. 2 at 27.

4. Cultural, Aesthetic, and Historical Values

a. Aesthetic Values

Background

“Aesthetics” refers to the subjective perception of natural beauty in the landscape and attempts to define and measure an area’s scenic qualities. Aesthetic values considered from a public standpoint in the EA, include topographical variation (hills, valleys, etc.), prominence of water in the landscape, vegetation variety (forests, pasture, etc.), diversity of scenic elements, degree of human development or alteration, and overall uniqueness of the scenic environment compared to the larger region.¹⁰¹

Based upon the consideration of these aesthetic values, PBS&J found that the study area reflects overall a medium to high level of aesthetic value for the region. Particularly the eastern portion of the study area, located in the Hill Country, is within an area of the state noted for its scenic beauty and characterized by impressive topographical relief, vegetation and wildflowers, abundant wildlife, and plateaus. LCRA TSC asserts that the level of human impact to the study area is relatively high, mainly due to the extensive agricultural and oil and gas operations, the development of numerous cities, and the development of rural subdivisions. The presence of various large creeks and rivers present some viewsapes of high aesthetic value. There are also a number of designated routes or trails, scenic overlooks, and rest areas, within the study area that emphasize the Hill Country’s natural beauty and other unique attractions.¹⁰²

In order to evaluate aesthetic impacts from LCRA TSC’s various alternative routes for the Project, PBS&J conducted field investigations to determine the estimated length of the line that would be visible from selected publicly accessible areas. These areas included those of potential

¹⁰¹ LCRA TSC Ex. 1, EA at 2-71; LCRA TSC Ex. 20 at 10.

¹⁰² LCRA TSC Ex. 1, EA at 2-71 to 2-3; LCRA TSC Ex. 9 at 27.

community value, recreational areas, particular scenic vistas that were encountered during the field surveys, and U.S. and state highways within the study area. Measurements were made to estimate the length of each of the primary alternative routes that would fall within the foreground visual zone (0.50 mile, unobstructed by vegetation or topography) of recreational areas or major highways. The determination of visibility of the transmission line from various points was calculated from USGS maps and aerial photography.¹⁰³

All of LCRA TSC's 60 primary alternative routes for the MK Project have some amount of ROW within the foreground visual zone of U.S. and state highways, in part a direct result of the deliberate inclusion of alternative routes paralleling U.S. and state highways. The length of route ROW within the foreground visual zone ranges from 7.80 (Routes MK3 and MK5) to 157.87 miles (Route MK33). Although a rather large number of parks and recreation areas are located within the study area, small portions of the routes' ROW would be located within the foreground visual zone of parks and recreation areas, ranging from 0.47 mile (Route MK23) to 10.00 miles (Route MK33). LCRA TSC's preferred route MK13 has 8.46 miles of ROW within the foreground visual zone of U.S. and state highways, and 4.24 miles of ROW within the foreground visual zone of parks or recreational areas.¹⁰⁴

LCRA TSC notes that with regard to visibility by the public, the alternative routes that follow all or portions of I-10 will be much more visible to more people than any of the alternative routes away from I-10.¹⁰⁵

Staff noted that construction of the Project will likely have both temporary and permanent negative aesthetic impacts, including views of ongoing construction, the cleared ROW, and the transmission facilities.¹⁰⁶ LCRA TSC also stated that construction of the line could have both temporary and permanent aesthetic effects, and therefore identified various mitigation measures

¹⁰³ LCRA TSC Ex. 1, EA at 5-26.

¹⁰⁴ LCRA TSC Ex. 1, EA at 26 to 5-27; LCRA TSC Ex. 20, Ex. RRR-3R (Rev. EA Table 6-1).

¹⁰⁵ LCRA TSC Ex. 20 at 10.

¹⁰⁶ Staff Ex. 1 at 36; Staff Ex. 2 at 28.

available to assist in reducing those impacts, including the manner in which ROW would be cleared and maintained.¹⁰⁷

A number of intervenors requested the use of steel and spun concrete poles, commonly called “monopoles,” for the proposed project. LCRA TSC explains that the Application proposes lattice structures to be consistent with its proposal in Docket No. 35665 and because lattice is the most cost-effective structure type. The Company’s base cost estimates for routes and segments assume lattice structures.¹⁰⁸

Regardless of the type of structures used, the double-circuit-capable 345-kV structures required for the project will be visible to landowners and the public. A number of intervenors have stated a preference for monopoles based on aesthetic interests. LCRA TSC notes that because lattice towers are not solid, they may blend into background views, while monopoles, which are large in diameter, can appear prominent in both background and close foreground views.¹⁰⁹

Because LCRA TSC recognizes the support expressed for monopole structures, it also included detailed cost information for a variety of structure types, including mixtures using both steel poles and spun concrete poles.¹¹⁰ The ALJs note that LCRA TSC has repeatedly represented that any of the proposed structures are acceptable and will be used if the PUC determines such structures are preferred. Because this is a matter of cost and landowner or community-specific, the ALJs agree with the Company that the ultimate decision as to structure type necessarily rests with the PUC and its balancing of costs and benefits.¹¹¹

If monopole structures are approved for at least certain locations, LCRA TSC requests that the Commission permit the Company to have the flexibility in design to deploy both steel and spun

¹⁰⁷ LCRA TSC Ex. 1, EA at 1-8 to 1-28, 2-71 to 2-73, 5-26.

¹⁰⁸ LCRA TSC Ex. 7 at 12-19 and CDS-3; LCRA TSC Ex. 14 at 5.

¹⁰⁹ LCRA TSC Ex. 7 at 16-17.

¹¹⁰ LCRA TSC Ex. 7 at 13, 18-19; LCRA TSC Ex. 14 at 5-12, CDS-2REB, and CDS-3REB.

¹¹¹ LCRA TSC Ex. 14 at 12.

concrete poles where appropriate for each to produce a cost-effective result. LCRA TSC also notes that, unlike other TSPs whose ROWs can change depending on which structure type is used, this is not the case with LCRA TSC. In LCRA TSC's case both lattice towers and monopoles will fit within a 100-foot ROW, which is as narrow, generally speaking, as the ROW for a double-circuit 345-kV transmission line can be made.

Discussion

In this docket, the Commission is faced with a choice regarding aesthetic values between placing the line along a northern or central route where it will be viewed by far fewer people, or placing it along I-10 (and possibly other highways) where it will be viewed by far more people. As explained below, the ALJs recommend that placing the line along a highway is a far better choice from an aesthetic values perspective.

First, however, in terms of numbers of habitable structures affected, Staff points out that it considered the aesthetic impact caused by the visibility of the line from habitable structures within 500 feet of the centerline of the ROW. Viewing aesthetics strictly from this perspective, MK13 impacts the fewest number of habitable structures. A review of LCRA TSC Exhibit 26 reveals that MK13 impacts only 18 habitable structures; Staff MK15 impacts 55; the Weinzierl proposed MK15 routes impact 45 each; if those three routes are altered to remain along I-10 past Kerrville, MK 61 (Weinzierl) and 62 (Staff) impact an additional 73 habitable structures, while MK 63 (Segrest) impacts 77 more. Finally, Routes MK32 and 33 impact 151 and 153 habitable structures respectively, the most significant impact on the aesthetic values in terms of structures.¹¹²

Staff also notes that MK13 has a length of 8.46 miles visible from US and State highways, whereas Staff MK15 has a visibility for a length of 49.11 miles.¹¹³ MK33 has the highest impact, with a length of 157.87 miles along US and State highways. With regard to visibility from

¹¹² LCRA TSC Ex. 20 at 6-85 to 6-93; LCRA TSC Ex. 26.

¹¹³ Staff Ex. 1 at 37.

parks/recreation areas, MK33 has the highest visibility of LCRA TSC's alternate routes with a length of 10 miles visible from state parks and recreational areas. MK13 is visible for a length of 4.24 miles from state parks and recreation areas. Staff MK15 has 4.43 miles of ROW within the foreground visual zone of parks/recreation area.¹¹⁴

As with community values, the aesthetic impact of the line is largely a function of who is viewing it from where. Kerrville argues that Route MK13 is preferable in terms of aesthetic values, because Route MK13 travels along the fifth least amount of right-of-way in the foreground visual zone of highways.¹¹⁵ Kerrville notes that one way to measure aesthetic disturbance is to calculate how many people would be affected by the disturbance. LCRA TSC witness Rob Reid testified that alternative routes following all or any portion of I-10 will have maximum visibility by people. The most recent TxDOT traffic counts indicated 18,800 vehicle trips per day on I-10 within Kerrville on an annual average basis. As a result, Mr. Reid concluded that "the routes along I-10 will be much more visible to more people than any of the alternative routes away from I-10."¹¹⁶ Routes MK33, MK32, MK61, MK62, and MK63 have between 64.22 and 157.87 miles within the foreground visual zone of U.S. and State Highways.¹¹⁷ Route MK13 only has 8.46 miles of the route within the foreground visual zone of U.S. and State Highways.¹¹⁸ And in response to certain intervenors who state that I-10 "is not driven by citizens for its scenic views,"¹¹⁹ Kerrville points out that Route MK13 also avoids aesthetic disturbance to two of the best Scenic Overlooks and Rest Areas in Texas that are located along I-10 in the vicinity of Links Y16 and Y20 and/or c1b.¹²⁰ As a result, Kerrville argues that, by avoiding I-10 and these scenic rest stops, Route MK13 presents minimal aesthetic disturbance to the study area.

¹¹⁴ LCRA TSC Ex. 1, EA at Table 6-1.

¹¹⁵ LCRA TSC Ex. 1, EA at 6.1.3.1 at 6-96.

¹¹⁶ LCRA TSC Ex. 20 at 10.

¹¹⁷ LCRA TSC Ex. 26.

¹¹⁸ LCRA TSC Ex. 26.

¹¹⁹ Nancy Lind Initial Brief at 5.

¹²⁰ LCRA TSC Ex. 1, EA at 2.11 at 2-73; Tr. at 246-247.

Parties opposed to central routes first argue that focusing solely on visibility from highways does not address the full range of aesthetic impacts. The ALJs agree. Aesthetic impacts to the Hill Country were expressed as a concern throughout the process including the Open Houses. And although LCRA TSC Exhibit 26 reflects numeric measures of aesthetics, full consideration of the line's aesthetic impact requires consideration of factors that are not included in the chart. These intervenors generally opine that routing the line across ranches in the heart of the Hill Country, will ruin the visual appearance of the landscape.¹²¹ CVA witness Mr. Jonathan Ogren testified, "[t]he transmission lines through the interior components of the study area would have a detrimental effect on the vast viewsheds that are a characteristic of the Hill Country and they would negatively impact the economic and natural capacity of the land through visual degradation."¹²²

Opponents of the central and northern routes also note that the central study area contains large tracts of relatively unfragmented and undeveloped land.¹²³ The natural beauty of this largely unspoiled region, includes scenic vistas, meadows, and oak-lined creeks and rivers, and is cherished by residents and visitors alike.¹²⁴ In contrast, the I-10 corridor is more densely developed than the surrounding Hill Country area.¹²⁵

And although the southeastern portion of the study area is recognized and valued for its scenic vistas, segments that follow I-10 transect an area that is largely commercial in nature.¹²⁶ They point out that the area already has elevated signage, such as billboards, and commercial development such as gas stations, and restaurants that do not evoke the same type of aesthetic sensitivity as the other areas of the Hill Country where undeveloped natural beauty is preserved.¹²⁷ The ALJs agree.

¹²¹ Tr. at 1331; WR Ex. 1 at 6.

¹²² CVA Ex. 4 at 8.

¹²³ CVA Ex. 9 at 9-10; TPWD Ex. 4 at 14; Tr. at 827-828.

¹²⁴ CVA Ex. 3 at 14-15.

¹²⁵ CVA Ex. 9 at 10.

¹²⁶ Gillespie Ex. 1 at Att. 3; LCRA TSC Ex. 1 at 2-71.

¹²⁷ Kerrville Ex. 1 at 5; Kerr County Ex. 3; Tr. at 708.

In reaching the recommendation that the line will have less aesthetic impact along a highway, the ALJs have made rational inferences, based on the evidence, that it would be far more jarring to see a 345-kV transmission line in a relatively remote and undeveloped area than to see it along I-10. The obvious downside to a route along I-10 is the sheer number of people who will see the line. However, as with most interstate highways, I-10 is by and large, a means of transportation across the state, where aesthetically pleasing views are incidental. Travelers and anyone in the proximity of I-10 in this part of Texas will see a myriad of commercial development including gas stations, convenience stores, chain and fast-food restaurants, strip malls, traffic – including heavy tractor-trailers, car lots, power lines, roadways – including feeder roads, and all of the development associated with small towns, larger municipalities, and cities like San Antonio. To be clear, the drive along I-10 west of San Antonio can be very aesthetically pleasing, but considering the existing development along this highway, it is far more likely that a 345-kV line will be lost in the visual foreground than if it were run along a central route through what is undoubtedly the aesthetically pleasing and relatively undeveloped Texas Hill Country.

b. Cultural, Historic, and Archeological Sites

Background

LCRA TSC explains that much of the study area has a high probability of containing previously unrecorded cultural resource sites. Therefore, PBS&J's analysis of these environmental criteria for the cultural resources evaluation was based on known data regarding sites in the area, the density of the sites, and the National Register of Historic Places (NRHP) and State Archaeological Landmark (SAL) potential for the sites. LCRA TSC notes that mitigation and construction practices are available to reduce or eliminate impacts to cultural resources sites.¹²⁸

One method used by archeologists to assess an area for potential cultural resources is to

¹²⁸ LCRA TSC Ex. 1, EA at 5-29 to 5-30, 5-32.

identify “high probability areas” (HPAs) where cultural resource sites might occur. Locations that are usually identified as HPAs for the occurrence of pre-historic sites include water crossings, stream confluences, drainages, alluvial terraces, wide floodplains, upland knolls and areas where lithic resources may be found.¹²⁹

PBS&J’s literature and records review indicate that in the portions of the study area where archeological investigations have been conducted, 174 recorded prehistoric or historic archeological sites are either crossed by one of LCRA TSC’s primary alternative routes or are within 1,000 feet of the centerline of such a route. Of these, 147 are associated with the MK proposed routes, nine are associated with the KG proposed routes, and 18 sites are shared by both.¹³⁰

Of the 60 primary alternative routes evaluated for the MK Project, 54 cross one or more recorded historic or prehistoric sites, with four routes crossing at least 15 or more sites. All 60 routes have additional recorded historic or prehistoric sites within 1,000 feet of the ROW centerline, with numbers ranging between 6 and 46 sites. Of the primary alternative routes, 22 cross one NRHP-listed or determined eligible site, and the other 38 cross no such sites. Exactly half (30) of the primary alternative routes have ROW centerline within 1,000 feet of one or more additional NRHP-listed or determined eligible sites, ranging from one to six sites, and the other 30 have none.¹³¹ Staff notes that the number of recorded historical/archaeological sites¹³² within 1,000 feet of the centerline of the routes varies from 8 to 70 sites.¹³³

There are 23 known or recorded historical or archeological sites either crossed (two sites) or located within 1,000 feet of the preferred route MK13 ROW centerline (21 sites). For Staff MK15 there are 47 sites.¹³⁴

¹²⁹ LCRA TSC Ex. 1, EA at 5-30.

¹³⁰ LCRA TSC Ex. 1, EA at 5-30.

¹³¹ LCRA TSC Ex. 20, Ex. RRR-3R (Rev. EA Table 6-1); LCRA TSC Ex. 1, EA at 5-31 to 5-32.

¹³² These sites include recorded historic and prehistoric sites and National Register-listed or determined eligible sites.

¹³³ Staff calculation using data at Table 6-1, Items 37-40.

¹³⁴ LCRA TSC Ex. 1 at 41; LCRA TSC Ex. 9 at 27; LCRA TSC Ex. 20, Ex. RRR-3R (Rev. EA Table 6-1).

Length of HPAs for ROW of LCRA TSC's 60 primary alternative MK routes ranged from a low of approximately 77.43 miles (Route MK20) to a high of approximately 126.95 miles (Route MK51), for routes of varying lengths.¹³⁵ Route MK13 (the MK preferred route) has a moderate HPA number, 103.53 miles.¹³⁶

LCRA TSC did not consider Fort McKavett to be a directly-affected landowner and none of the route segments proposed in this docket cross the Fort. The distances between the segments that pass by the Fort are from approximately 1.18 miles to over 7 miles from the Fort site. The Fort has been more fully discussed in the Parks and Recreation section of this PFD.

Finally, LCRA TSC notes that in the process of evaluating the primary alternative routes in recommending the preferred route, potential for impact on cultural resources did not present a primary evaluation criterion for comparison between LCRA TSC's routes.¹³⁷

¹³⁵ LCRA TSC Ex. 20, Ex. RRR-3R (Rev. EA Table 6-1) and Ex. RRR-4R (Rev. EA Table 6-2); LCRA TSC Ex. 1, EA at 6-30.

¹³⁶ LCRA TSC Ex. 20, Ex. RRR-3R (Rev. EA Table 6-1) and Ex. RRR-4R (Rev. EA Table 6-2).

¹³⁷ LCRA TSC Ex. 1, EA at 6-96, 6-98.

Discussion

A number of intervenors offered expert archaeological testimony regarding the potential for the existence of historic sites on their properties. LCRA TSC, however, has specifically acknowledged that many areas of the Hill Country have high potential for the occurrence of archeological sites. The Company outlined a plan for addressing any sites encountered during construction in Section 5.3 of the EA. LCRA TSC argues, however, that no evidence was offered regarding specific impacts on cultural resources that would warrant consideration for purposes of routing the proposed transmission line. Nor is there evidence that LCRA TSC's method for addressing archeological sites during construction is inappropriate.¹³⁸ Staff proposes that specific language be included in the order requiring LCRA TSC, if it finds any archeological or cultural resources during construction, to cease work immediately in the vicinity of the resources and notify the THC to determine what appropriate actions should be taken.¹³⁹ Although LCRA TSC obviously possesses expertise in dealing with archeological sites, the ALJs support Staff's recommendation in addition to those measures proposed by the Company.

Kerrville argues that Route MK13 respects historical values by avoiding known historical landmarks in the study area.¹⁴⁰ The group notes that MK13 avoids Fort McKavett¹⁴¹ and also avoids historic sites in Mason County, such as the Pinta Trail¹⁴² and Fort Mason.¹⁴³ In response, a number of intervenors who oppose a central route note that Route MK13 does not avoid historical areas in the southeastern portion of the study area.¹⁴⁴ These intervenors also argue that a central route would have a negative impact on historical values. They point out that many ranches in the interior of the

¹³⁸ LCRA TSC Ex. 9 at 27-28; LCRA TSC Ex. 20 at 8-9.

¹³⁹ Staff Ex. 1 at 14; Staff Ex. 2 at 16.

¹⁴⁰ Kerrville refers to the Kerrville group of parties, including the City of Kerrville, Kerr County, KPUB, and Cecil Atkisson.

¹⁴¹ Garza Ex. 18 at 4-7; Alexander Ex. 4 at 4-7; Tr. at 1469.

¹⁴² P-Line Ex. 9 at 2-3.

¹⁴³ P-Line Ex. 7 at 3-7.

¹⁴⁴ Gillespie Initial Brief at 8.

study area contain historical artifacts.¹⁴⁵ These parties generally argue that the selection of Route MK15 alternatives will have a lesser impact on historical values than would the selection of a central route. Route MK15, for example, crosses 7.5 fewer miles of ROW across areas of high archeological/historical site potential than MK13. MK15 also has three fewer National Register-listed or determined-eligible sites within 1,000 ft of the centerline of the ROW than MK13.¹⁴⁶ Finally, while the City of Kerrville argues that Route MK13 avoids historic landmarks such as Fort McKavett and Fort Mason, Gillespie County notes that the same is equally true for Route MK62 Modified.¹⁴⁷

The ALJs first note that the majority of the routes in contention avoid Fort McKavett. From a historical and archeological perspective, the ALJs prefer routes parallel to I-10 as opposed to the central routes. The existence of the highway, in addition to commercial and residential development normally associated with proximity to an interstate highway system means that historical sites in the area are more likely to have been disturbed. In contrast, the central routes are more likely to impact previously undisturbed sites of historical value. Taking everything into consideration, the ALJs recommend that, from a historical and archeological perspective, the routes along I-10 are better suited for placement of the line than central routes such as MK13.

5. Environmental Integrity

a. Background

LCRA TSC's consultant PBS&J, examined a wide range of environmental information in its EA, which was researched and analyzed through a variety of methods and by representatives of various environmental disciplines. In developing the EA, the geographic locations of environmentally sensitive and other restrictive areas within the study area were located and considered during the route delineation process. Each alternative route was evaluated, considering a

¹⁴⁵ WR Ex. 1 at 5; McGinley L-Ranch Ex. 1 at 11.

¹⁴⁶ LCRA TSC Ex. 26.

¹⁴⁷ Kerrville Initial Brief at 7.

variety of criteria and environmental conditions present. As a result of this process, LCRA TSC represents that all routes presented in the Application (and all segments that form those routes) provide environmentally acceptable alternatives and the overall impact of the routes was greatly reduced.¹⁴⁸

Factors considered particularly important in the ecological evaluation of potential impacts from the line includes the length across potential Golden Cheeked Warbler (Warbler) habitat, the length across upland and riparian woodland, the length paralleling/utilizing existing ROW, and the length parallel to and within 100 feet of streams. Based on the relationship, sensitivity, and relative importance of the major environmental criteria, LCRA TSC focused on paralleling existing ROW, potential impacts to threatened/endangered species, and woodlands as among the primary evaluation criteria used to recommend a preferred route. Based on these criteria, LCRA TSC's preferred route (MK13) was ranked first from an ecological standpoint in the EA.¹⁴⁹

The Company acknowledges that, as with all transmission lines, some impacts are inevitable. However, based upon an assessment of environmental conditions and in consideration of construction techniques and mitigation measures, LCRA TSC asserts that the Project will cause only short-term impacts to soil, water, and ecological resources.¹⁵⁰ The Company has undertaken a permitting process under Section 10 of the Endangered Species Act with the U.S. Fish and Wildlife Service (USFWS) to appropriately consider impacts to federally listed species and their habitat, regardless of the route ultimately approved by the Commission.¹⁵¹

Animal species potentially occurring along the proposed transmission routes include the federally listed (endangered) Black-Capped Vireo (Vireo) and Warbler, and the state-listed (threatened) Zone-Tailed Hawk, Bald Eagle, Texas Tortoise, and Texas Horned Lizard. Table 2.5 of the EA lists all threatened or endangered species of potential occurrence in the study area based on

¹⁴⁸ LCRA TSC Ex. 9 at 9, 34.

¹⁴⁹ LCRA TSC Ex. 1, EA at 5-16, 6-84, 6-96, 6-98.

¹⁵⁰ LCRA TSC Ex. 9 at 28; LCRA TSC Ex. 1, EA at 5-1 to 5-16.

¹⁵¹ LCRA TSC Ex. 9 at 28.

information from USFWS, TPWD, and TPWD's Natural Diversity Database (TXNDD). The project is not expected to adversely impact populations of any federally listed endangered wildlife species, and it is unlikely that it will result in adverse impacts to federal and state listed threatened species. Nevertheless, LCRA TSC is aware of and has prepared for the need to obtain a permit from USFWS to take endangered species habitat. Before construction, an assessment will be made to verify whether any habitat for endangered or threatened species is present along the route that is approved. Finally, LCRA TSC plans to undertake mitigation projects in conjunction with this project in order to protect Warbler and Vireo habitats, among other species.¹⁵²

Based on the EA, LCRA TSC considers wildlife habitat throughout the study area to be fragmented by land use impacts such as roads, brush clearing associated with ranching and agricultural activities, pipelines, electric distribution lines, and a host of other activities. According to the Company, whether fragmentation of habitat is of actual consequence to individual wildlife species depends on additional considerations, including the particular species.¹⁵³

Once a route is selected, LCRA TSC proposes to account for the location of endangered/threatened species on individual landowners' property or additional known occupied habitat by routing adjustments, construction procedures and techniques, and mitigation. The Company points out that various transmission service providers have faced these conditions in certification proceedings and there exists an established set of Commission-accepted adjustments, procedures, techniques and mitigation to allow the successful completion of the Project for any route

¹⁵² LCRA TSC Ex. 1, EA at 1-25, 5-13 to 5-15; Table 2-5; LCRA TSC Ex. 9 at 28-29, 33.

¹⁵³ LCRA TSC Ex. 20, at 44.

the Commission selects.¹⁵⁴ In the past, both formal and informal post-order consultation with other agencies has allowed transmission service providers the ability to accommodate these concerns.¹⁵⁵

After the route is selected by the Commission, the Company proposes to consult with the USFWS for known occupied or potential habitat for endangered species. As part of those efforts, LCRA TSC will use a Habitat Conservation Plan (HCP) development and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS. As a result of these measures, even if Warbler and Vireo are present along the Commission selected route, the Company represents that the Project will neither jeopardize their continued existence, nor have a significant adverse impact to those populations.¹⁵⁶

Finally, the Company notes that different techniques are available to accommodate all federally-listed endangered species identified in the study area. The Commission may select a route that passes through an area containing plant species composition and configuration favorable to a protected species, or there may even be known individuals of the species scattered throughout the area. In that case: the route could be adjusted in minor ways to avoid higher quality “blocks” of habitat; transmission towers could be placed in existing “openings” with limited further clearing for ROW access; and/or permits could be granted for appropriate clearing permissions along with possible mitigation, depending on a number of considerations.¹⁵⁷

Staff

Staff’s witnesses reviewed and considered the EA, responses to requests for information, and

¹⁵⁴ The Company noted the following LCRA TSC projects that properly dealt with the presence of endangered species and/or potential habitat after the Commission selected a route: Kendall-CPS Tie (Kendall County) Docket No. 29065; Andice-Glasscock (Williamson County) Docket No. 28450; Hill Country (Kendall & Bexar County) Docket No. 29684; Sandy Creek (Llano County) Docket No. 29833; Medina Lake-CPS Tie (Bandera & Medina Counties) Docket No. 32934; Rim Rock-Goat Creek (Kerr County) Docket No. 33844. All of these projects have been successfully constructed and where appropriate, in consultation with the USFWS. For some of these projects, no consultation was required. LCRA TSC Ex. 20 at 14-15.

¹⁵⁵ LCRA TSC Ex. 9 at 28-30.

¹⁵⁶ LCRA TSC Ex. 20 at 15-16.

¹⁵⁷ LCRA TSC Ex. 9 at 30.

testimony and statements of position.¹⁵⁸ Staff concluded that any route selected in this case will affect the environmental integrity of the study area.¹⁵⁹ Staff notes that items 13 and 27-36 of the 41 criteria evaluated by LCRA TSC reflect the environmental impact of the proposed routes.¹⁶⁰ Those factors measure the miles of ROW that will be in rangeland/pastureland, in upland woodland, or bottomland/riparian woodland habitat, in potential wetlands, in known federally endangered/threatened species habitat, in potential Warbler habitat, across open water or 100-year flood plains, paralleling streams or rivers and the number of streams or river crossings that will be made by the transmission line.¹⁶¹

Staff also notes that the construction of a line in rangeland/pastureland would be less detrimental than it would be in a woodland habitat. Mr. Reid testified that construction in rangeland/pastureland will recover from the effects of construction because the habitat will regrow within the ROW. Woodland habitat, however, requires a greater regenerative time compared to pastureland.¹⁶²

To illustrate general difference among the primary routes in contention, Staff outlined the environmental criteria on three routes, Staff MK15, MK13 and MK33 (a complete list of the routes in contention and relative criteria is found in LCRA TSC Ex. 26). The environmental statistics for those three routes are:¹⁶³

Criteria	Staff MK15	MK13	MK33
Miles of Rangeland/pastureland	140.98	129.72	150.54
Miles of upland woodland habitat	31.88	29.20	36.80
Miles of bottomland/riparian	.75	1.37	1.24

¹⁵⁸ Staff Ex. 1 at 9

¹⁵⁹ TPWD Ex. 5.

¹⁶⁰ LCRA TSC Ex. 1 at Table 6.

¹⁶¹ LCRA TSC Ex. 1 at Table 6.

¹⁶² LCRA TSC Ex. 1 at 5-11; LCRA TSC Ex. 23 at 1; Tr. at 396 -397.

¹⁶³ LCRA TSC Ex. 23 at 1.

Criteria	Staff MK15	MK13	MK33
woodland			
Miles of potential wetlands	.21	.27	.40
Miles of known/occupied federally endangered or threatened species habitat	.88	.55	0
Cross miles of open water	.11	.08	.08
Miles of 100-year flood plains	7.58	5.13	14.67
Miles of streams and rivers paralleled	2.46	1.34	1.82
Streams crossed	160	144	143
Rivers crossed	2	4	4

Staff found that all three routes rank well in terms of the miles of known/occupied federally endangered or threatened species habitat. On its face, MK13 ranks very well in limiting the miles through potential Warbler habitat, although the limits of TXNDD records are discussed below. Upland woodland is the primary habitat for the Warbler though that species is also found in bottomland/riparian habitat. Of the three primary routes, MK13 impacts the least upland woodland habitat. Staff MK15 impacts 2.68 miles more upland woodland than MK13 and MK33 impacts 7.6 miles more. The statistics for the impacts on bottomland/riparian woodland range from 3 miles more than MK13 to a little under one tenth of a mile less than MK13. MK33 and similarly situated routes traverse 36 miles of upland woodland habitat, almost 7 more miles of upland woodland habitat than MK13 and 5 miles more than Staff MK15. MK33 and MK13 impact more bottomland/riparian woodland habitat than Staff MK15.¹⁶⁴

Specific arguments raised by Staff are addressed below.

TPWD

TPWD's participation in this docket is also discussed below. TPWD provided comments and recommendations regarding the Project in a letter dated September 24, 2010 (TPWD Letter) and through the testimony of four TPWD witnesses. TPWD asserts that construction of any of the

¹⁶⁴ LCRA TSC Ex. 23 at 1.

proposed routes would require almost entirely new ROW and take significant amounts of existing wildlife habitat. Although the TPWD Letter states its opposition to all routes in the Application, to the extent the Commission approves a transmission line in this docket, TPWD supports routes MK32 and MK33 because they would have the least adverse impact on fish and wildlife resources. The specifics of TPWD's recommendations are discussed below.¹⁶⁵

TPWD owns and operates the 16.1 acre Old Tunnel WMA in Kendall County, Texas, located within 500 feet of Links A3 and O4, the latter of which is part of proposed route MK 22.¹⁶⁶ TPWD opposes all routes that use Links A3 or O4 because of the expected negative impact to the public benefits of Old Tunnel WMA, and the Old Tunnel bat colony. Impacts on the bat colony are discussed separately below.

There is one major concern raised by TPWD regarding data collection for the TXNDD records that many parties, including LCRA TSC, specifically rely on. Due to lack of access to private property, the absence of TXNDD records at a specific site does not mean that the species does not occur there. Most TXNDD records are gathered from publicly accessible lands (parks and wildlife management areas) and highway ROW. Most of the impacted Project area, however, consists of privately owned ranch land. Endangered species and their habitat on private lands are little known due to this lack of access and state laws governing the collection and dissemination of biological information from private lands. As a result, much of the empty space on the map represents record gaps for which no information was available because they have not been surveyed. However, known TXNDD records for most species follow highway ROW, are located in state, county or city parks and preserves, or are found close to university campuses such as the one at Junction, where biologists or scientists are more likely to recognize an endangered species. TPWD argues the only way to determine if a species is present on a project is to conduct on-the-ground surveys in potential habitat at the time of year when the species is most likely to be present, and only with repeated visits.¹⁶⁷

¹⁶⁵ Staff Ex. 7 at 78; TPWD Ex. 5.

¹⁶⁶ TPWD Ex. 1 at 3, 12; TPWD Ex. 3 at 4; LCRA TSC Ex. 1 at Table 4-1.

¹⁶⁷ Staff Ex. 1, Appendix C at bates 55-56; TPWD Ex. 4 at 10-11.

The issue of insufficient information on endangered species and habitat raises a major concern for the ALJs over the use of TXNDD records to demonstrate potential impact of the routes. There are two primary problems that flow from this. First, surveys cannot be conducted as requested by TPWD. Second, the conclusion that the I-10 routes will take more habitat than central and northern routes is thrown into serious doubt, because the TXNDD records are an incomplete sample and the matter is more nuanced than counting the sheer amount of property taken.

As discussed below, there appears to be no reasonable remedy for the lack of species and habitat information in the study area. Limited access to private property rules out a series of Project area-wide surveys. And even if limited to a Commission-selected route, TPWD's proposal of multiple on-the-ground surveys in potential habitat at specific times of the year is simply unworkable for a project of this scope and within the CREZ timeframe. TPWD may be correct that the only way to establish species occurrence at a specific site is through such surveys. Nevertheless, the ALJs consider them too cumbersome, potentially costly, and time-consuming for implementation. Furthermore, without access to private property before the CCN is approved, there is no means for LCRA TSC to conduct the surveys.

As for selecting a route based on environmental factors, parties opposed to the I-10 routes reference their sheer length and TXNDD records to argue that these routes involve more habitat loss. While this may facially accurate, based on TPWD's clarification, the ALJs do not consider the absence of TXNDD records to establish the absence of species or habitat. Furthermore, as argued by TPWD, CVA, and other supporters of MK32 and MK33, the I-10 corridor is obviously fragmented to a much greater extent than the central routes, although those routes involve fragmentation as well. Fragmentation is discussed below.

To be clear, the ALJs do not discount the value of TXNDD records in this proceeding for certain purposes. TXNDD records, however, appear to have limited value in establishing the absence of a particular species or habitat in certain areas. As noted by Staff, a thorough analysis of

the impacts of a route on environmental integrity must also evaluate the type of habitat in which the endangered species is likely to be located.

Kerrville argues that TPWD's testimony and recommendations should be given little to no weight, because TPWD provided conflicting recommendations in this proceeding. As addressed above, the TPWD Letter appears to recommend rejection of all routes on environmental grounds, while TPWD witnesses and TPWD's Initial Brief recommend MK32 or MK33. Kerrville explains this change in position by noting that TPWD witness Dr. Karen Clary only reviewed the testimony of LCRA TSC, Staff, and CVA. Dr. Clary also admitted that she met with members of CVA.¹⁶⁸

Kerrville raises a valid point. The ALJs would have preferred that Dr. Clary had reviewed more evidence in reaching her conclusions. However, she still possesses the qualifications to support her opinions and she did review evidence in this proceeding. As for TPWD's change in positions, the ALJs do not consider such a change to render TPWD's recommendations useless. To the contrary, TPWD's position is consistent in that it opposes the Project on environmental grounds, but that if a route must be selected, it prefers MK32 or MK33.

Kerrville also complains that TPWD focused only on wildlife habitat fragmentation to the exclusion of all other factors, such as impacts to upland woodlands or impacts to wetlands.¹⁶⁹ Again, while the ALJs prefer that a party's position be as developed as possible, TPWD addressed wetlands, creeks, and streams as specifically discussed below. Regardless, TPWD provided evidence in this case that the ALJs found valuable.

Kerrville criticizes TPWD's preference for MK32 or MK33 arguing that it is contrary to PBS&J's findings on ecological factors, which ranked Route MK13 first ecologically.¹⁷⁰ Kerrville argues that TPWD's preferred routes cross more Warbler habitat than others, in order to minimize

¹⁶⁸ Staff Ex. 1, Appendix C at bates 52; Staff Ex. 7 at 59, 62, 75-77; PUC Staff Ex. 8.

¹⁶⁹ TPWD Ex. 4 at 13.

¹⁷⁰ Tr. at 1469-1470.

total habitat fragmentation.¹⁷¹ PBS&J found that Route MK 13 crosses the least amount of potential Warbler habitat and the thirteenth least amount of upland woodland.¹⁷² However, this again raises the issue of the limited utility of TXNDD records in comparative analysis, due to the lack of access to private lands. MK32 and MK33 parallel I-10, providing access for survey of habitat, while MK13 crosses a great deal of private land. As a result, the ALJs are not persuaded by this criticism of TPWD's route preference.

Finally, Staff, LCRA TSC, and a number of intervenors note that TPWD's recommendation is based solely upon environmental impacts and does not account for other factors the Commission must evaluate when approving a route, such as cost, constraints, prudent avoidance, or impacts on aviation.¹⁷³ The ALJs expressly acknowledge the limits of TPWD's recommendation. However, solely from an environmental standpoint the ALJs agree with TPWD's preference for MK 32 or MK33.

b. Discussion

Land Fragmentation

Although many intervenors expressed concern over land fragmentation, it is one of the greatest concerns of those parties opposed to the central routes. From a fragmentation perspective, the ALJs conclude that the absence of a major highway or transmission line for much of the central study area argues against placing the line there and favors paralleling the I-10 corridor.

Parties opposed to the central routes generally argue that MK32 and MK33 are most preferable in terms of minimizing habitat fragmentation.¹⁷⁴ TPWD's Dr. Clary and CVA's expert

¹⁷¹ Tr. at 830-833.

¹⁷² LCRA TSC Ex. 1, EA at 6.1.3.1 at 6-96 and Table 6-1; LCRA TSC Ex. 26.

¹⁷³ Tr. at 839.

¹⁷⁴ For parties other than TPWD and CVA who generally support these routes, see, Weinzierl Initial Brief at 8-9; Gillespie County and City of Fredericksburg Initial Brief at 9; Six Mile Ranch Initial Brief at 13. In the alternative,

Dr. Neal Wilkins testified that avoiding additional fragmentation of wildlife habitat is one of the most important environmental considerations in this proceeding – for TPWD it is the single greatest concern regarding the environmental impact of the line. Although there is relatively little existing habitat fragmentation within the MK study area, Dr. Clary testified, “this project has the potential to fragment wildlife habitat on a scale not seen since the construction of I-10.”¹⁷⁵ In fact, major highway ROW comprises the largest corridors of habitat fragmentation in the area, particularly the I-10 corridor. In contrast, the portion of the study area north of I-10 contains some of the “largest blocks of unfragmented wildlife habitat on the Edwards Plateau.”¹⁷⁶

Dr. Wilkins testified that land fragmentation, and its consequence, is one of the greatest statewide challenges to wildlife management and conservation in Texas. In 2000, a report from the Governor’s Task Force on Conservation concluded that “The fragmentation of . . . family owned farms and ranches poses perhaps the greatest single threat to our wildlife habitat and to the long-term viability of agriculture in Texas.”¹⁷⁷

Dr. Wilkins explained that development of a new corridor, which is in contrast with the surrounding landscape, is likely to stimulate current landowners to sell their property. Landowners are aware that the construction of ROW creates an opportunity for that area to be considered a compatible corridor, opening the door for the cumulative effects of widened ROW and additional construction for future pipelines and/or transmission lines. Dividing a large tract into smaller parcels causes a series of changes that often negatively impact wildlife management, natural resource conservation, and agricultural production. For instance, smaller operations impact economies-of-scale for wildlife management and animal agriculture.¹⁷⁸

some of these parties argue that if other factors make these routes unacceptable, MK15 is the next best option.

¹⁷⁵ TPWD Ex. 4 at 14, 20.

¹⁷⁶ TPWD Ex. 5 at 6; TPWD Ex. 4 at 4, 13-14; CVA Ex. 1 at 17, 25.

¹⁷⁷ CVA Ex. 1 at 10.

¹⁷⁸ CVA Ex. 1 at 10-11.

Dr. Wilkins also testified that MK13 and all of the links contributing to the central routes cut through the middle section of lands managed by the Doss-Harper Wildlife Management Association (WMA). These landowners manage their wildlife resources in a cooperative that helps them overcome some of the inefficiencies common to land fragmentation. Some of these privately-managed lands have been managed for generations under the same ownership. Along Links b36, b50, b51, and b42-47, Route MK13 would run through the center of the Doss-Harper WMA for approximately 12 miles.¹⁷⁹

CVA, TPWD, Weinzierl, and other opponents of a central route recommend a route that parallels the greatest extent of existing disturbed corridor, like the I-10 corridor, because habitat along highways is already fragmented. Dr. Wilkins explained that:

When a right-of-way is placed along a wide corridor such as I-10, the effects to the species are lessened due to the fact that the potential habitat removed . . . does not further fragment larger patches into numerous smaller patches.¹⁸⁰

As a result, these parties recommend MK32 and MK33 because they follow US 277 and I-10. As TPWD's witness, Dr. Clary concluded, "[s]uch a route would have the least adverse impact on wildlife and habitat in this part of the Edwards Plateau."¹⁸¹

In response, Staff and a number of other intervenors argue that the longer the transmission line traverses any habitat, the more damage it inflicts. These parties oppose MK33 and MK32, asserting that they cause more damage to habitat because they are longer – MK33 is the longest proposed route at 161.09 miles. From that perspective, MK13 is the most favorable route as it is shortest at 134.99 miles. Staff proposes that Staff MK15 is a fair compromise, because it falls between these two routes at 144.13 miles.¹⁸²

Although the ALJs ultimately recommend Staff MK15, in terms of fragmentation, they are

¹⁷⁹ CVA Ex. 1 at 12-14.

¹⁸⁰ CVA Ex. 1 at 17.

¹⁸¹ TPWD Ex. 5 at 6; CVA Ex. 1 at 17, 25.

¹⁸² LCRA TSC Ex. 23

not persuaded that it is superior to MK32 or MK33. The ALJs find the sheer counting of miles overly simplistic. The ALJs agree with TPWD, CVA, Weinzierl, and others that the I-10 corridor is already heavily fragmented, whereas the central and northern routes (to a somewhat lesser extent) are not. And to the extent that Staff and opponents of MK32 and MK33 rely on the TXNDD, TPWD has made clear that there is less information about the northern and central routes than the I-10 corridor due to limited access for sampling.

The ALJs do, however, agree with Staff's environmental evaluation of the P-Line routes. In particular, although those routes parallel a 138-kV transmission line for a considerable distance, Staff determined they were not preferable to other routing alternatives, in part, because of the environmental impacts of such routing. The benefits expected from routing parallel to an existing transmission line are not experienced in this situation because the existing footprint of the 138-kV transmission line is small and substantially re-grown such that it doesn't have a deleterious effect on the habitat.¹⁸³ P-Line Intervenors provided considerable evidence that the existing line is in various stages of re-growth with prevalent groundcover and a moderate amount of woody vegetation.¹⁸⁴ As a result, adding another much taller line with sizably larger structures and a wider ROW will have a more significant impact on the wildlife habitat, including endangered species habitat, than construction along more compatible ROWs such as roads or highways.

In response to concerns over fragmentation, the Company notes that the voluntary activities of many current landowners result in, or will result in, fragmentation including fencing and roads, clearing of cedar or brush, re-seeding with native grasses, improving structures, enhancing property for recreation, business, or family interests, and future development, all of which alter land's pristine

¹⁸³ Tr. at 829.

¹⁸⁴ P-Line Ex. 16 at 3.

condition.¹⁸⁵ In addition, LCRA TSC argues that land fragmentation also results from the decisions of individual landowners to subdivide and/or sell their property.¹⁸⁶

While LCRA TSC is correct that landowner activities throughout the Project area results in fragmentation, the ALJs find that fragmentation associated with a project of this size and scope is qualitatively and quantitatively different from those activities. As argued by TPWD and CVA, the scale of the Project and its potential for land fragmentation rivals that of the creation of the I-10 corridor through the Hill Country. From a fragmentation perspective, the ALJs conclude that MK32 and MK33 are superior to other routes.

Oak Wilt

Intervenors opposed to a central route are also concerned that fragmentation could lead to the spread of Oak Wilt disease. Oak Wilt is caused by a fungus that clogs water-conducting vessels in infected oak trees, causing them to wilt and ultimately die. While Oak Wilt can be spread through the roots of oak trees, it can also be spread much longer distances by sap-feeding beetles that carry spores from infected trees and deposit them on “wounds” in uninfected trees. Once a new tree is infected, the disease will spread through root contact to other nearby trees at a rate of approximately 75 feet per year.¹⁸⁷

Parties concerned about Oak Wilt argue that the central portion of the Hill Country, which is currently impacted by very little Oak Wilt, could become susceptible to the disease as a result of the cutting and pruning necessary to clear and maintain the ROW for the proposed line. Parties opposed to a central route argue that the impact will be greatest in the central portion of the study area. They note that approximately 700 to 1,600 live oaks per mile will be removed and another 200-500 live oaks per mile will need to be pruned. These parties argue that routes that follow existing disturbed corridors, where the trees are more likely to have been cleared or previously exposed to Oak Wilt,

¹⁸⁵ LCRA TSC Ex. 11 at 9-10; LCRA Ex. 20 at 16. LCRA TSC points out that two intervenors – Triple Oaks Partners, Ltd and CEW Ventures have subdivided their land and are building roads and utilities for a residential community, and yet claim that their land is “untouched by man-made infrastructure” and offers “scenic views.” Initial Brief of Triple Oaks Partners at 8, Initial Brief of CEW at 5; Tr. at 843-850.

¹⁸⁶ LCRA TSC Ex. 20 at 16.

¹⁸⁷ CVA Ex. 2 at 5-6.

will pose less risk of increasing the spread of the disease.¹⁸⁸ As a result, they argue that routes along the I-10 corridor, such as MK32, MK33, and variants of MK15, and other previously disturbed areas should be used to the greatest extent practicable to minimize the impact and spread of Oak Wilt. The ALJs agree and note that it reflects another reason the I-10 corridor is superior from an ecological perspective.

Warbler and Vireo

Potential habitat for both the federally and state-endangered Vireo and Warbler is likely to be encountered along most of the routes. There are known occurrences of the Vireo and Warbler along or near segments proposed as part of route alternatives for the Project.¹⁸⁹ Data provided by Loomis Partners, Inc. documents that all of the routes cross potential Warbler habitat. Among the routes, MK13 crosses the least amount of known potential Warbler habitat (approximately 3.34 miles). But the ALJs again caution against giving too much weight to the absence of TXNDD records in areas on private land.

LCRA TSC argues that the presence of, or claimed potential habitat for Vireo should not be considered a conclusive factor or even a deciding factor in the choice between routes for several reasons. First, echoing TPWD's concerns, the Company explains that without ground inspection of particular ecological areas, it is difficult to impossible to determine the presence of suitable habitat for Vireo, due to particular species composition and configuration needed. Vireo habitat consists of patchy shrubs interspersed with open areas and cannot be identified by aerial photography. For that reason, USFWS does not accept aerial imagery interpretation as confirmation of the presence or absence of Vireo habitat.¹⁹⁰ Thus, all routes cannot be equally evaluated for Vireo habitat.

Second, given the nature of the study area, the Company deems it likely that areas of actual inhabited Vireo habitat occur throughout the area and along most, if not all, routes. Consistent with

¹⁸⁸ CVA Ex. 2 at 9-13.

¹⁸⁹ LCRA TSC Ex. 20 at 13; LCRA TSC Ex. 1, EA 5-13 and 5-14.

¹⁹⁰ LCRA TSC Ex. 20 at 27.

TPWD's concerns over use of TXNDD records, LCRA TSC notes that while reported occurrences may be identified in TXNDD and brought forth by landowners, Vireo will likely occur on other routes and at other locations not documented presently. Additional locations of Vireo will likely be discovered post-certification and pre-construction on any route chosen. Thus, it is unlikely that potential habitat and actual Vireo can be avoided as part of the certification process.

Third, based on the Commission's past practices and the work of utilities with USFWS, accommodations for the species can be made through structure placement, ROW clearance and other forms of mitigation. Specifically, Mr. Reid stated that LCRA TSC could place structures in open areas or route around habitat that is identified in the field thereby minimizing the impact on Vireo. LCRA TSC asserts that this allows the Commission to accommodate a host of competing concerns in comparing potential routes.¹⁹¹

As for the Warbler, its occurrence and potential habitat is different from the Vireo. Due to species composition and configuration, it is possible to identify and map potential habitat with some accuracy through certain types of aerial photography. Attempts can then be made to minimize/avoid potential habitat, in addition to reviewing TXNDD data in making comparisons.

CVA, however, takes issue with LCRA TSC's quantification of the impact to Warblers and Vireos. CVA argues that the Company simply quantified the total length of each proposed route that would cross potential habitat, rather than examining which routes would result in the greatest additional habitat fragmentation. According to Dr. Wilkins, "it is not necessarily the length of potential habitat cleared that is relevant, but it is the ultimate habitat fragmentation created that is the most relevant metric" in evaluating impacts to Warblers.¹⁹²

Nevertheless, as with the Vireo, the Company argues the presence of potential habitat or even the occurrence of Warbler along a route is not a fatal flaw, but rather one of many issues to be

¹⁹¹ LCRA TSC Ex. 9 at 29; Tr. at 1200.

¹⁹² CVA Ex. 1 at 14-15, 17, 25.

evaluated by the Commission. LCRA TSC argues that Warbler populations are not inconsistent with either existing or newly-constructed transmission line ROW.¹⁹³

Finally, the Company notes that transmission line projects in Texas have been successfully constructed through known occupied habitat for Warbler and Vireo. The Commission-selected route for the LCRA TSC Segovia transmission line in Kimble County (Docket No. 20313), which parallels Link b23a in this docket, was routed through known occupied habitat of the Warbler.¹⁹⁴ Through informal consultation with the USFWS, the line was successfully placed and constructed. CPS Energy's portion of the Cagnon-Kendall transmission line passed through known occupied habitat of the Warbler in Bexar County. Through formal consultation with USFWS, the line was constructed and CPS Energy voluntarily conducted three years of monitoring surveys for Warblers. The number of Warblers and Warbler territories in proximity to the line has increased since the line was constructed. Finally, the Morgan Creek-Twin Buttes-Red Creek-Comanche transmission line (Docket No. 22798) was routed by PBS&J, certificated by LCRA TSC, and constructed by American Electric Power Co. on behalf of LCRA TSC through known occupied habitat and high quality potential habitat of the Vireo in an area north of San Angelo with informal consultation with USFWS.¹⁹⁵

The ALJs conclude that Vireo and Warbler habitat are likely to be present throughout the Project area, regardless of the route chosen. As discussed above, the TXNDD records may not reflect the actual presence of habitat or species. Based on the evidence, the ALJs conclude that some impact on the Vireo or Warbler should be assumed. Nevertheless, LCRA TSC has a demonstrated capacity in dealing with endangered species and implementing mitigation efforts.

¹⁹³ LCRA TSC Ex. 9 at 29-30.

¹⁹⁴ *Application of Lower Colorado River Authority to Amend Certificate of Convenience and Necessity for a Proposed 138 kV Transmission Line in Kimble County*, Docket No. 20313 (May 21, 1999).

¹⁹⁵ LCRA TSC Ex. 20 at 15; *Application of West Texas Utilities Company to Amend Certificate of Convenience and Necessity for Proposed Transmission Line in Sterling, Coke, Tom Green, Concho, Coleman, and McCullough Counties*, Docket No. 22798 (Aug. 10, 2001).

Creeks, Streams, and Rivers

Several intervenors raised concerns regarding environmental impacts on creek and river crossings. As set out below, each alternative route involves several such crossings. Construction in a flood plain is also a concern because it may impede the flow of water or result in erosion and sedimentation impacts.¹⁹⁶ Returning to Staff's three representative routes, Staff notes that MK33 impacts three times more miles of 100-year flood plain than MK13 and twice as many miles as Staff MK15.¹⁹⁷

The EA notes that length parallel to streams and rivers is a highly significant environmental factor. MK13 has 1.34 miles parallel to rivers and streams, the lowest length of the routes listed in LCRA TSC Ex. 26. MK32 and MK33 parallel 1.93 and 1.82 miles, respectively. Staff MK15 has 2.46 miles. The P-Line routes range between 3.49 and 3.73 miles, the highest among those routes. Stated another way, Staff's route parallels 0.64 miles more than MK33 and 1.12 more miles than MK13, though it crosses fewer rivers than either.¹⁹⁸

Staff MK15 and MK32 have only two river crossings, while MK13 and MK33 have four river crossings each. The P-Line routes are the highest with five river crossings each. MK13 and MK33 have among the lowest number of stream crossings, at 144 and 143, respectively. MK32 has 154 crossings, while Staff MK15 has 160. The P-Line routes cross between 186 and 190 streams, the highest among the routes listed in LCRA TSC Ex. 26.¹⁹⁹

LCRA TSC has established that creek and river crossings can be spanned by the line in a manner that is technically feasible and also minimally disruptive of natural resources in the surrounding area. In order to address construction effects near rivers and creeks, LCRA TSC intends to implement appropriate erosion control measures as described in sections 1.5, 5.1.2, 5.1.3, and

¹⁹⁶ LCRA TSC Ex. 1, EA at 5-4.

¹⁹⁷ LCRA TSC Ex. 26.

¹⁹⁸ LCRA TSC Ex. 1, EA at 6-84; LCRA TSC Ex. 26.

¹⁹⁹ LCRA TSC Ex. 26.

5.1.4 of the EA. LCRA TSC will also develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to prevent silting of bodies of water, including creeks, rivers, and springs. The SWPPP will be in effect during all phases of construction and until re-growth is achieved.²⁰⁰

LCRA TSC expects that the Project will not adversely impact water resources and streams, including Ecologically Significant Stream Segments (ESSS). TPWD has designated ESSS throughout the state based on criteria related to “biological function, hydrological function, riparian conservation areas, water quality, aquatic life, aesthetic value, and the presence of threatened or endangered species or unique communities.”²⁰¹ In its April 1, 2010 letter to LCRA TSC, TPWD stated that it “strongly recommends that the proposed project avoid any adverse impacts to . . . ESSSs.”²⁰² Due to the nature of the study area, all of the route options would cross at least one ESSS and many of the routes will cross more than one ESSS, some at more harmful locations than others. Nevertheless, LCRA TSC maintains that there will be no adverse impact in light of the Company’s proposals for spanning creeks and other measures that are intended to be minimally disruptive of natural resources in the surrounding area.²⁰³

Weinzierl Ranch notes that all routes using Links b21c or z4, b33 or z5, b34, or b35a, will cross the James River ESSS, and the majority of central routes use one of these links.²⁰⁴ In addition, all routes that use Links b44, b50b, b52, or O3 would cross the Pedernales River ESSS (most of the MK routes use one of these links). For example, Route MK13 crosses both the James River on Link b33, as well as the Pedernales River on Link b50b.²⁰⁵ Weinzierl points out that Staff MK15, MK32, and MK33 cross neither. Because these routes travel south to parallel the I-10 corridor, they contain a single ESSS crossing—the Fessenden Branch.²⁰⁶ Further, the Fessenden Branch crossing

²⁰⁰ LCRA TSC Ex. 7 at 28-29.

²⁰¹ LCRA Ex. 1, EA at 2-15 to 2-16; *see also* 31 TAC § 357.8.

²⁰² LCRA Ex. 1, EA at Appendix F.

²⁰³ LCRA TSC Ex. 14 at 18; LCRA TSC Ex. 20 at 45-46; LCRA TSC Ex. 1, EA at 2-15 to 2-16, 5-2 to 5-8, and Fig. 3.

²⁰⁴ LCRA TSC Ex. 1, EA at Fig. 3-1c, g; LCRA Ex. 2 at Exhibit SM-2.

²⁰⁵ LCRA TSC Ex. 1, EA at Fig. 3-1d, g; LCRA Ex. 2 at Exhibit SM-2.

²⁰⁶ LCRA TSC Ex. 1, EA at Fig. 3-1g.

on Link b29d is at a previously disturbed location, where the stream is already crossed by I-10.²⁰⁷ As a result, Weinzierl argues that this crossing poses a much lower impact than the James River and Pedernales River crossings on the central routes.

The Company anticipates potential impacts to mussel species to be minimal. The Commission has found that the appropriate way to address potential mussel impacts is to examine carefully the factual assertions concerning the impacts and consider whether standard construction techniques would alleviate any potential impacts. In this case, the Company argues that no impact has been demonstrated and construction techniques are adequate to deal with potential impacts. Although certain links among the KG routes cross the Live Oak Creek mussel sanctuary, LCRA TSC will span the creek upstream of the lower dam at Lady Bird Johnson Park. As a result LCRA TSC argues that impacts to this particular mussel sanctuary will be minimal.²⁰⁸

Six Mile Ranch notes that the headwaters of the San Saba River located between FM 864 in Menard County upstream and Fort McKavett in Menard County is an ESSS. This segment contains one of only four known remaining populations of the state-listed Texas Fatmucket freshwater mussel and one of only four known remaining populations of the state-listed Texas Pimpleback freshwater mussel. TPWD recommends that the proposed project avoid any adverse impacts to this ESSS.²⁰⁹ While the ALJs are confident that LCRA TSC can minimize any impact to this ESSS, the ALJs nevertheless consider this another reason to avoid routes that impact Fort McKavett.

Although the ALJs recommend against the P-Lines, the P-Line Intervenors note that TPWD's comments and P-Line Intervenors' witness Kevin Ramberg's testimony reference the presence of two mussel sanctuaries along MK-22, MK-23 and MK-24, including the San Saba River Mussel sanctuary and the Live Oak Creek TPWD Mussel Sanctuary (crossed by KG routing links, as well). Mr. Ramberg also testified that Segment P1 crosses limestone considered the likely recharge zone of the Clear Creek Gambusia karstic spring cave complexes, which are the habitat for a

²⁰⁷ LCRA TSC Ex. 1, EA at Fig. 3-1g.

²⁰⁸ LCRA TSC Ex. 1, EA at 5-15; LCRA TSC Ex. 20 at 47.

²⁰⁹ TPWD Ex. 4 at 32-34; LCRA TSC Ex. 1, EA at 2-15.

federally-listed endangered fish, the Clear Creek Gambusia. The Clear Creek Gambusia exists only in the Clear Creek stream complex.²¹⁰

McGinley L-Ranch and Armstrong Exempt Trust argue that along MK13, the land in the area of segments b36, b50a, and b51 is sensitive in many ways. These links (among others throughout the study area, including the P-Lines) cross karstic terrain formed by the dissolution of limestone. The terrain is generally characterized by sinkholes, caves, cavities, and depressions that channel water underground. "Karstic formations are web-like and interconnected to the degree that a perturbation in a formation may have a result in another formation long distances away."²¹¹ Heavy equipment for construction of the line as well as the installation of the poles themselves can disturb the surface and subsurface water systems and their flow back into an aquifer. LCRA TSC acknowledged that with caves near the surface "you can impact it [the cave] and have issues . . . [with] installing foundations. [LCRA] prefer[s] to find out about them in advance, relocate structures, do things not to encounter them when you drill a hole to install a foundation."²¹² The McGinley L-Ranch's hydrology system plays a part in actively recharging the Edwards aquifer. The McGinley L-Ranch's springs also serve as the headwaters for Threadgill Creek, a tributary to the Llano River, in turn a tributary to the Colorado River. If the line were built on these links, some springs on the McGinley L-Ranch would be within 200 and 400 yards of the line.²¹³

Although LCRA TSC has established that it can safely span creeks and streams, the ALJs find that issues associated with potential risks to mussel sanctuaries, karstic formations, and ESSS as factors that reinforce the unattractiveness of the P-Lines, MK13, and other central routes from an environmental perspective. To the extent that the I-10 links may implicate floodplain issues, LCRA TSC SWPPP may be able to prevent or mitigate silting of bodies of water, including creeks, rivers, and springs until re-growth is achieved. In particular, streams, rivers and floodplains along I-10 have already been impacted, unlike much of the central and northern Project areas.

²¹⁰ Staff Ex. 1 at 67; P-Line Ex. 6 at 3-4.

²¹¹ P-Line Ex. 3 at 6.

²¹² Tr. at 236.

²¹³ McGinley Ranch L- Ex. 1 at 16; McGinley L Ranch Ex. 2 at 5-10; McGinley L- Ranch Ex. 3 at 10.

Old Tunnel WMA and Bat Issues

Old Tunnel WMA issues are also generally discussed under Recreation and Park Areas. However, certain issues specific to environmental concerns warrant further discussion here. TPWD is concerned that the line, if placed on Links A3 or O4, would result in bat mortality and possible abandonment of the colony. As a result of potential harm to the Old Tunnel as an environmental and recreational resource, TPWD opposes any route that uses these links.

Professor John Baccus, who testified on behalf of TPWD, is an expert on human impacts on birds and mammals through land disturbance or habitat modification. In particular, he has spent a great deal of time researching and publishing articles on bat populations in Texas, New Mexico, Mexico, and Asia. Professor Baccus testified that biologists have recently become alarmed at the risk posed to birds and bats by power lines. In particular, he articulated concerns raised by the proximity of a transmission line to the Old Tunnel, in that: based on observed flight patterns, the bats will fly into the area of the line; subsonic, ultrasonic and ambient noise may place the colonies at risk and in fact, may attract bats to the line; and electromagnetic radiation may affect the bats' navigation capacities.²¹⁴

LCRA TSC argues that for segments A3 and O4 structure designs, all conductor-to-conductor and conductor-to-tower clearances are well above the recommended clearance of 60 inches, therefore electrocution of bats should not be an issue with this transmission line. The Company also argues that a lack of bat collisions with respect to existing transmission lines demonstrates there is no serious risk of collisions for bat populations from the line. LCRA TSC notes that no evidence exists of any collisions with the existing 138-kV line near Old Tunnel WMA despite reported observations of bat emergences on over 2500 occasions. Further, LCRA TSC argues there is no evidence of bat collisions in similar situations, such as with the Austin Energy

²¹⁴ TPWD Ex. 3 at 6-8.

double-circuit 138-kV transmission line near the Congress Avenue Bridge bat colony.²¹⁵

LCRA TSC also argues that TPWD's concerns are speculative and lack evidentiary foundation, because some of the studies cited by Dr. Baccus are speculative, contradictory, or do not focus sufficiently on bats, as opposed to birds.²¹⁶ While these are valid criticisms, they do not completely undermine the evidentiary basis for TPWD's concerns. Dr. Baccus' testimony was supported by literature and symposiums, with which he was familiar. Most importantly, these studies and Mr. Baccus' testimony are sufficient evidentiary support for TPWD's concern that the line may have some impact on bat populations, even if the scientific research is conflicting as to the nature of that impact. The ALJs find that TPWD has raised genuine questions about the potential impact of transmission lines on the bat colonies at the Old Tunnel. The ALJs do not recommend a route using any of the links opposed by TPWD regarding the Old Tunnel.

Finally, Links b34 and b36 of MK13 cross the headwaters of the James River basin and approach the Little Devil's River. As the route crosses the Little Devil's and James Rivers, it comes in close proximity to the Eckert James River Bat Cave Preserve, with one of the largest known concentrations of breeding Mexican free-tailed bats anywhere. The ALJs' conclusion that TPWD raised valid concerns over the line's impact on bat colonies applies equally to this bat cave preserve.²¹⁷

²¹⁵ LCRA TSC Ex. 14 at 33; LCRA TSC Ex. 20 at 50.

²¹⁶ LCRA TSC Ex. 16 at 12-14; LCRA TSC Ex. 20 at 48-52.

²¹⁷ CVA Ex. 1 at 12-14.

c. Conclusion

The central study area, and to a somewhat lesser extent the P-Lines, are relatively unfragmented compared to the I-10 corridor. Land fragmentation and Oak Wilt are major environmental concerns for the ALJs -- the impact of the line is expected to be greatest in the central study area, where there may be relatively fewer TXNDD records. Although there are also concerns over flood-plains, and paralleling and crossing rivers, creeks, and streams, LCRA TSC has a demonstrated ability to span these areas and use SWPPP. From an environmental perspective, the ALJs agree with TPWD, Weinzierl, and CVA that paralleling US 277 and the I-10 corridor is the best way to avoid major fragmentation associated with the line's new ROW. As a result, the ALJs recommend MK32 or MK33 as the routes, best designed to avoid all of the negative consequences of habitat fragmentation.

However, the ALJs are aware that other factors weigh against selecting routes MK32 or MK33. In recognition of these factors, certain parties opposed to a central route request that the Commission use the highest length of compatible corridors possible. Although Staff MK15 is the ultimate recommendation of the ALJs, MK62 maximizes the length of Staff MK15 parallel to I-10. As a result, the ALJs rank MK62 second from an environmental standpoint (along with MK61). Of the remaining routes, Staff's is best. Nearly 60 miles of MK15, or 44% of its total length, would parallel existing ROW, including a substantial distance along I-10.²¹⁸ MK15 would parallel a much greater length of existing ROW than Route MK13 or other central routes.²¹⁹ As a result, the ALJs recommend Staff MK15 as clearly preferable to any of the central routes in terms of minimizing habitat fragmentation.

²¹⁸ LCRA TSC Ex. 26.

²¹⁹ LCRA TSC Ex. 1, EA at 6-85 to 6-92.

6. The Effect of Granting the Certificate on the Ability of this State to Meet the Goal Established by Section 39.904(a)

In order to fulfill the renewable energy goals established by the Legislature in PURA § 39.904(a), the Commission adopted, in Docket No. 33672, a transmission plan to deliver renewable energy to the market. In Docket No. 35665, the Commission designated certain transmission service providers to build the required transmission facilities. In Docket No. 33672, the Commission determined that the transmission facilities identified in its final order, including the Project, were necessary to deliver to customers the renewable energy generated in the CREZ. As a designated CREZ project that will provide transmission capacity for the delivery of renewable energy, the ALJs find that the Project plays a key role in helping this State to meet the goal established by PURA § 39.904(a).

7. Engineering Constraints

a. Kimble County Airport and Llano River Floodplain

The Kimble County Airport, located just north of I-10 in Junction presents one of the more significant engineering constraints. The runway is oriented north-south, and the transmission line if it is approved along either the MK 15 routes using Links b19b and b19c or the MK 32 or 33 routes using Link Y11 will pass perpendicular to the runway either to the north or the south of the airport. Construction of the line along any of the links will require Federal Aviation Administration (FAA) notification.²²⁰ Link Y11 also runs through the Llano River floodplain, further complicating construction of the line.

i. Links b19b and b19c, North of the Airport

LCRA TSC has proposed routing options that it asserts will maintain reliability of the line, are feasible to construct, and which LCRA TSC believes are likely to be accepted by the FAA.

²²⁰ CVA Ex. 7 at 3.

Links b19b and b19c to the north of the airport are segments proposed to bypass the airport restrictions but still permit routes that generally follow the I-10 corridor.

While the routes north of the airport using Links b19b and b19c would technically violate the FAA Part 77 imaginary surface and would require FAA notification, LCRA TSC believes that the segment could be built without FAA objection. The proposed links are located behind and below the crest of a hill that lies in the northern approach to the airport.²²¹ The hill itself violates the Part 77 imaginary surface rules because the imaginary surface runs through the hill.²²² Construction along segments b19b and b19c would be below the existing obstacle clearance slope and well below the instrument approach slope.²²³ As a result, it is LCRA TSC's belief, based upon its experience with the FAA and upon the opinion of its airport consultant, that the FAA would not object to the construction.²²⁴ In addition, there are adjustments that LCRA TSC could make to work out a solution with the FAA, if necessary. Lower structures could be used, minor route deviations could move the structures to locations slightly more downhill from the airport, or warning lights could be added.²²⁵

While construction along these links would require FAA notification, construction is feasible because the proposed line would not violate the published obstacle clearance slope or instrument approach slopes and room exists for minor route adjustments, reduced height structures or warning lights should such adjustments be required by the FAA.

²²¹ LCRA TSC Ex. 14 at 35-36 and CDS-5REB and CDS-6REB.

²²² *Id.*; LCRA TSC Ex. 15 at 9.

²²³ LCRA TSC Ex. 15 at 9-11; LCRA TSC Ex. 14 at 35-36.

²²⁴ LCRA TSC Ex. 15 at 11.

²²⁵ LCRA TSC Ex. 15 at 9-11; LCRA TSC Ex. 14 at 35-36.

ii. Link Y11, South of the Airport

Link Y11 is proposed as a part of the routes that follow I-10 through the Junction area, including Route MK 33.²²⁶ Construction along Y11 would locate the line approximately 1,200 to 1,800 feet from the south end of the airport's primary runway. In addition to the constraint presented by the airport, this area presents unique engineering challenges as it is in a flood plain and is on a narrow strip of land between I-10 and the northern bank of the Llano River north of Junction. As a result, there is limited room for route adjustments to avoid the airport because the main flood channel of the river lies to the south and the location of the city itself precludes a move farther south to avoid the flood channel.²²⁷

Considering these conditions, LCRA TSC tried to design an overhead solution that would avoid the high cost of underground construction. Such an overhead solution had to stay beneath the published obstacle clearance slope but permit sufficient surface clearance over flood levels so that line clearances could be maintained and the line could remain in service during flood events. An overhead solution is not available in the professional engineering opinion of LCRA TSC's transmission design staff because it would not meet industry standards.²²⁸ The only solution that will permit a safe, reliable transmission line along this segment that will achieve the purpose for which the PUC has ordered LCRA TSC to construct the line is an underground transmission line for approximately one-half mile to get past the airport restrictions. Given the high cost of this solution (approximately \$54 million for that one-half mile), the links bypassing the airport to the north are preferable.²²⁹

²²⁶ LCRA TSC Ex. 7 at 35-36; LCRA TSC Ex. 14 at 35-38.

²²⁷ LCRA TSC Ex. 7 at 35; LCRA TSC Ex. 14 at 36-38; Tr. at 1463-64.

²²⁸ LCRA TSC Ex. 7 at 35; Tr. at 1216.

²²⁹ LCRA TSC Ex. 7 at 35; LCRA TSC Ex. 14 at 36-38; Tr. at 1188-1191, 1462-1466.

iii. Intervenor's and Staff's Arguments

The Segrest parties and CVA addressed the concerns of routing around the Kimble County Airport. The Segrest parties support the preferred route and the P-Line routes. They own property along Links b19b and b19c and do not want the transmission line routed through their property. They argue that because there may be difficulties in constructing the line either north or south of the airport, the line should be placed much farther to the north along the preferred route or the P-Line.²³⁰

Although CVA advocates for a route that parallels I-10 for its entire length, CVA recognizes that the additional cost of \$54 million to bury the transmission line south of Kimble County Airport along Link Y11 is prohibitive.²³¹ CVA argues, however, that the line does not have to be buried along Link Y11. CVA's expert, Frank McIlwain, is a pilot and an engineer with airport design experience. Mr. McIlwain testified that he believes the FAA would not object to construction of the transmission line on Link Y11 if the heights of the structures do not exceed 61 feet.²³² LCRA TSC's expert witness, William Griffin, P.E., acknowledged on cross examination that a structure 60 feet tall would not be determined by the FAA to be an obstruction to air navigation.²³³ A structure of that height would, however, have reliability issues in the event of a flood because the wires would be close to the rising water level, which would require taking the line out of service in the event of a flood.²³⁴ For that reason, LCRA TSC cannot build a safe and reliable above-ground transmission line south of the Kimble County airport.

LCRA TSC, the entity that will be responsible for the safe construction, operation and maintenance of the D to K line, testified that an above-ground line along I-10 near the Kimble

²³⁰ At the hearing, the Segrest parties proposed a route identified as Segrest MK15, which was routed south of the airport and included the underground construction on Link Y11. In briefing, Segrest no longer advocated for its route because of the cost of underground construction and advocated instead for MK13 or one of the P-Lines. The routes that are north of the Kimble County airport cross the Segrest parties' properties.

²³¹ CVA Initial Brief at 9.

²³² CVA Ex. 7 at 6.

²³³ Tr. at 1303, 1462.

²³⁴ LCRA TSC Ex. 7 at 35.

County airport is not a safe, reliable, and viable option.²³⁵ For these reasons Staff does not believe it would be prudent to recommend construction of the line on Y11 except as an underground facility. Staff also agrees with CVA that the cost of underground construction is prohibitive.

iv. Analysis

Although the ALJs agree with CVA and TPWD that environmentally, the best choice for the line would be to parallel I-10 as much as possible, underground construction along Link Y11 is too expensive to recommend. The weight of the evidence does not support CVA's contention that Link Y11 can be built above ground. Although Links b19b and b19c may require some modification if the FAA expresses concern about the construction, those modifications would be considerably cheaper than building the line underground at Link Y11. Given that LCRA TSC is responsible for ensuring that the line is safe and reliable, the better option is to route the line north of the Kimble County Airport. Staff, Weinzierl, and CVA alternate proposal MK32 all route around the airport along Links b19b and b19c. Staff MK15 best balances the factors of cost, paralleling ROW, prudent avoidance, and environment. MK32 and 33 are better in terms of the environmental factors but are poor on cost and prudent avoidance. Therefore, the ALJs recommend Staff MK15.

b. P-Line Concerns

The P-Line Intervenors raise concerns about the difficulty of constructing transmission lines along the P-Lines due to the geology of caves and granite.

Mason County is geologically "karstic," which means the terrain is formed by the dissolution of bedrock, and is generally characterized by sinkholes, caves, cavities and depressions that channel water underground.²³⁶ These formations are interconnected in such a way that disturbances in the formation may impact another formation some distance away.²³⁷ LCRA would prefer to avoid caves when constructing transmission lines/structures, because encountering them when drilling for

²³⁵ Tr. at 1404-1406.

²³⁶ P-Line Ex. 24 at 15 (picture by Mr. Meinzer from his book Texas Hill Country, showing caves).

²³⁷ P-Line Ex. 3 at 6.

foundations is problematic. P-Line Intervenors assert that because the karstic features are not necessarily visible from the surface, construction of the project through Mason County would be complicated by the delays that would occur as caves are encountered, which would require LCRA to find another area to which it could re-locate the transmission structures.²³⁸

The Llano, or Central Texas, Uplift is a central basin having a rolling floor studded with rounded granite hills 400 to 600 feet high.²³⁹ The foundation requirements for transmission structures vary depending on soil types. Because granite is the dominant soil type in the Llano Uplift, in Mason County the cost for construction of any of the P-Lines would be higher regardless of the type of structures used.²⁴⁰

LCRA TSC has indicated, and it is undisputed, that it can construct the transmission line along any route. There is no evidence that it cannot construct the line along the P-Line routes. However, as discussed in other sections, the P-Line routes are among the least desirable in terms of reliability issues, cost, and environmental effects.

8. Costs, Using Existing Compatible ROW, and Prudent Avoidance

a. Tension Between Cost, Paralleling ROW and Prudent Avoidance

No party disputed LCRA TSC's cost estimates. The 60 filed routes for the McCamey D to Kendall transmission line range in cost from \$251.8 million to \$406.8 million.²⁴¹ Of the routes in discussed in depth at the hearing, the cost estimates range from \$266.4 million (MK13) to \$406.8 million (MK33). Staff MK15 is estimated to cost \$302.3 million. The P-Line routes all cost over \$315 million.²⁴²

²³⁸ Tr. at 236.

²³⁹ P-Line Ex. 10 at Ex. BG-2 and BG-3 (photos); P-Line Ex. 24 at 12 - 13.

²⁴⁰ LCRA TSC Ex. 7 at 14 and CDS-2.

²⁴¹ LCRA TSC Ex. 14, Ex. CDS-2REB at 4.

²⁴² LCRA TSC Ex. 26.

Although MK13 is the least expensive route in contention at the hearing, the difference in the cost estimates associated with using MK13 does not outweigh the benefits associated with paralleling as much existing cleared ROW as is feasible. Although Staff MK15, MK61, 62, and 63, and CVA's MK32 are more expensive than LCRA TSC's preferred route, they parallel I-10 for a much greater distance than the preferred route, thereby avoiding ranch land located in the central part of the study area. These areas north of I-10 in the study area are remote, largely unfragmented, and sparsely populated.²⁴³ This region includes the "virgin ranch" lands to which Commissioner Smitherman referred when the Commission delayed this project and ordered the study of additional routes, including the I-10 corridor. The preferred route also parallels parcel lines for the least distance of any of the routes in contention. Staff's route parallels Ranch Road 1624 to merge with I-10, making it the most western route that does not follow Highway 277. None of the filed routes use existing ROW.

The table below illustrates the tension in this case between the high environmental and aesthetic impact of not following existing ROW compared to the expected lower cost of a shorter, straighter route.²⁴⁴ It also shows how many habitable structures would be affected by the route.

²⁴³ See, e.g. TPWD Ex. 4 at 14; Tr. at 827-828; CVA Ex. 9 at 9-10.

²⁴⁴ This table is derived from LCRA TSC Ex. 26.

Route	Overall length	Length paralleling existing ROW ²⁴⁵	Cost in millions	Number of habitable structures
MK13 (preferred)	134.99	39.34	\$266.4	18
MK15	135.63	59.76	\$286.8	45
Staff MK15	144.13	79	\$302.3	55
MK22	155.29	94.17	\$326.4	44
MK23	151.84	80.75	\$315.6	43
MK24	151.5	87.53	\$315.9	37
MK32	164.42	130.25	\$349.3	151
MK33	161.09	132.96	\$406.8	153
MK61	133.31	60.86	\$287.3	118
MK62	141.81	80.09	\$302.9	128

The higher habitable structure counts along MK32, 33, 61, and 62, are primarily a result of the line running parallel to I-10 through Kerrville.

P.U.C. SUBST. R. 25.101(a)(4) defines the term “prudent avoidance” as “the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.” Essentially, prudent avoidance includes the consideration of reasonable and cost-effective routing adjustments to limit EMF exposure by minimizing the number of habitable structures in close proximity.

It is undisputed that all of LCRA TSC’s filed routes are consistent with the Commission’s prudent avoidance policy.

²⁴⁵ This section includes any ROW paralleled, whether highway, transmission line, pipeline, or road. For the P-Line routes (MK22, MK23, and Mk24), it includes the existing 138-kV line that may not be compatible ROW with a 345-kV CREZ line.

b. Best Balance of Cost, Paralleling, and Prudent Avoidance

Because all filed routes comply with the Commission's policy on prudent avoidance, no route can be completely excluded on the basis of prudent avoidance alone. While the preferred route has the fewest habitable structures, it is weak environmentally and parallels significantly less existing ROW than other routes. As discussed throughout this PFD, given the length of this line, the characteristics of the Hill Country, and the tremendous opposition to routing the line through the Hill Country, a better solution is to parallel more existing cleared ROW, such as I-10.

CVA's two preferred routes parallel as much existing highway ROW as possible. Staff MK15 parallels I-10 but not Highway 277, thereby reducing the cost. Staff's preferred route also uses Links b84 and b86, which bisect AC Ranches. AC Ranches has agreed to have the transmission line routed through its property. Because a landowner along those links has agreed to take the line, Staff recognized that agreement as an indication of community values and recommended routing the line along those links.²⁴⁶ However, other landowners along b84 and b86 are members of CVA and oppose the line on those links and others not paralleling the highway.

The parties agree that running the transmission line along I-10 south of the Kimble County Airport underground is prohibitively expensive. Therefore, a better recommendation is to follow I-10 as much as possible, as Staff MK15 does, deviating north of the Kimble County Airport, and deviating north of Kerrville. Going through Kerrville along MK33, 61, or 62, adds several habitable structures but it avoids cutting through the Tierra Linda Ranch subdivision. The habitable structures along the links that run through Kerrville include 59 habitable structures along Links Y18 and Y19b. Of these 59 habitable structures, 17 would need to be relocated.²⁴⁷ Of the 17 habitable structures identified as being located within the right-of-way near Interstate 10 in the vicinity of Kerrville, only six would be within the ROW if LCRA TSC constructed the line using a 100' instead of a 140' ROW for this portion of the line.²⁴⁸ Additionally, the City of Kerrville is concerned with the

²⁴⁶ Staff Ex. 1 at 25.

²⁴⁷ Tr. at 706.

²⁴⁸ Tr. at 1317-1324.

line running close to the city and its growing population.²⁴⁹ Both Kerrville and Kerr County are concerned that running the transmission line either parallel to I-10 or deviating just to the north of I-10 will impact existing and future development.²⁵⁰

If the line deviates round Kerrville using Link b56, which must be used if the line deviates around Kerrville from the west along I-10, it will affect the Tierra Linda Ranch subdivision.²⁵¹ The line would parallel an existing pipeline easement through the subdivision. Landowners in Tierra Linda, both those directly affected by the proposed line, and those who are not directly affected by the proposed line intervened to argue that the line should not go through their subdivision.

LCRA TSC identified 15 habitable structures within 500' of the ROW centerline along Link b56 within Tierra Linda Ranch. One structure lies within 69 feet of the proposed centerline.²⁵² These habitable structures lie along a linear distance of approximately $\frac{3}{4}$ mile, or 4,000 feet.²⁵³ Thus, Tierra Linda argues that the density of the housing development along with the vocal opposition of its homeowners' association should weigh strongly against routing the transmission line through the subdivision.

Whether a route is chosen that runs along I-10 through the northern portions of Kerrville or deviates around Kerrville through the Tierra Linda Ranch subdivision, landowners will be affected. Some structures along I-10 will have to be moved if the line goes through Kerrville. But the northern portions of Kerrville are already affected and bisected by I-10. I-10 is an existing disturbance in the landscape that is not natural or scenic. Moving the line into an area that does not have a large scar across the landscape already is more damaging than placing it along an already-disturbed area. Not only is it better environmentally, as TPWD and CVA argue, but it helps to

²⁴⁹ Kerrville Ex. 1 at 4; Kerr County Ex. 1 at 5-8.

²⁵⁰ Kerrville Ex. 1 at 5-10, Attachments A-F; KPUB Ex. 1 at 6. These issues are also discussed in the community values section of the PFD.

²⁵¹ Tierra Linda is not affected by LCRA TSC's preferred route, the P-Line routes or any of the routes that follow I-10 through Kerrville.

²⁵² Tr. at 1264.

²⁵³ Tr. at 279 – 280.

preserve the scenic nature of the Hill Country, which position CVA has held throughout the proceeding. Therefore, although they affect more habitable structures than MK13 and are more expensive, Staff MK15, CVA's second choice of MK32, and MK62 provide a better balance of the factors of cost, paralleling existing ROW, and prudent avoidance.

c. EMF

Several individual intervenors expressed concerns about possible adverse effects from electric-magnetic fields (EMF), including health effects and impacts to electrical and mechanical devices.²⁵⁴ LCRA TSC's proposed alternative routes reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields. The project design incorporates, where technically feasible, optimal phasing arrangements and ground clearance heights that result in lower EMF levels, which is consistent with prudent avoidance from an engineering perspective.²⁵⁵

A series of EMF measurements at various locations along the proposed routes (in Fredericksburg, Kerrville, Junction, and Menard) demonstrates, in relation to the calculated EMF levels modeled for the proposed project, that EMF from this project are within the range of the fields that people can experience every day in their normal living and working environments, and are substantially below the EMF exposure limits adopted by recognized international organizations.²⁵⁶

Extensive scientific research has been conducted on EMF and health over the past several decades. Based on the large body of scientific research on EMF and human health, there is no reliable scientific basis to conclude that exposure to power frequency EMF from these 345-kV transmission lines will cause or contribute to adverse health effects, including the development of childhood leukemia or other childhood and adult cancers, or other health problems such as neurological disorders or adverse reproductive outcomes, in persons along the proposed line route.²⁵⁷

²⁵⁴ See *e.g.* Foster Ex. 2 at 8; TPWD Ex. 1 at 13; TPWD Ex. 3 at 7-8.

²⁵⁵ LCRA TSC Ex. 9 at 33; LCRA TSC Ex. 2 at 30; LCRA TSC Ex. 8 at 15; LCRA TSC Ex. 7 at 11-12.

²⁵⁶ LCRA TSC Ex. 8 at 15; LCRA TSC Ex. 7 at 11-12; LCRA TSC Ex. 19 at 6; LCRA TSC Ex. 14 at CDS-1R.

²⁵⁷ LCRA TSC Ex. 17 at 16-17; LCRA TSC Ex. 18 at 14-15; Tr. 1430-1431.

Based on the large body of scientific research on EMF and animals, there is no reliable scientific basis to conclude that power frequency EMF from these 345-kV transmission lines will cause or contribute to adverse effects on the well-being of animals living along the route of the transmission line. Given that scientific research on EMF has shown no reproducible effects on genetic changes related to the development or progression of cancer, there is no reliable scientific basis to conclude that exposure to power frequency EMF would make an existing cancer worse.²⁵⁸

There is nothing unusual about the EMF levels from the proposed project. They are within the range of EMF exposures that can be experienced in daily home and work environments and are substantially below the public EMF exposure limits adopted by international organizations.²⁵⁹

The EMF concerns raised by the intervenors are not a basis for choosing between any particular route or altering any particular route for the proposed transmission line.

G. Preliminary Order Issue Nos. 7 and 8

Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes? If alternative routes or facility configurations are considered due to individual landowner preference: (a) have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations; and (b) have the accommodations to landowners diminished the electric efficiency of the line or reliability?

Several alternatives to LCRA TSC's preferred route were proposed by intervenors. LCRA TSC represents that none of the proposed alternatives, each made up of segments that were part of the Application, would diminish the efficiency of the line or its reliability. Staff concluded that no alternative routes or facilities that would have a less negative impact on landowners than those proposed by LCRA TSC were proposed by any party or were apparent from Staff's review of the

²⁵⁸ LCRA TSC Ex. 16 at 15.

²⁵⁹ LCRA TSC Ex. 8 at 15.

application.²⁶⁰ However, Staff has identified a number of minor route adjustments that can be made at reasonable cost and included these adjustments in its recommendation.

A brief description of the modifications to the preferred route, alternatives, and associated cost issues are addressed below. No intervenor testified regarding an offer to offset additional costs associated with a requested accommodation due to landowner preferences.²⁶¹

1. Alternative Routes Evaluated by LCRA TSC

LCRA TSC Ex. 26 (Attachment A to the PFD) is a comparison of suggested alternative routes in addition to LCRA TSC's preferred route. The alternatives described below are formulated from segments contained in the EA. The following is a descriptive comparison of the routes represented in LCRA TSC Ex. 26. The descriptions begin with LCRA TSC's environmental and routing consultant witness's summary of key points of the preferred route,²⁶² and continue with comparable points in routes either suggested by Staff and intervenors as having less negative impact on landowners, or suggested by the ALJs for comparative purposes.

- a. MK 13 (LCRA TSC preferred route)
 - base cost \$266.4 million;
 - 134.99 mile length;
 - 18 habitable structures within 500 feet;
 - 29% paralleling existing ROW;
 - avoids towns and cities (such as Eldorado, Sonora, Junction, Menard, Mason, Kerrville, and Fredericksburg), and Fort McKavett;
 - crosses least amount of potential Warbler habitat (3.34 miles);
 - avoids Tierra Linda;
 - avoids visibility of major roadways.²⁶³
- b. MK 15 (Weinzierl preferred route)
 - base cost \$286.8 million;
 - 135.63 mile length;

²⁶⁰ Staff Ex. 1 at 11-12, 19.

²⁶¹ Staff Ex. 1 at 12; Staff Ex. 2 at 14.

²⁶² Tr. at 1469-1470.

²⁶³ Tr. at 1469-1470.

- 45 habitable structures within 500 feet;
 - 44% paralleling existing ROW;
 - avoids towns and cities, and Fort McKavett;
 - routes around Kimble County Airport using segments to north of airport;
 - crosses high amount of potential Warbler habitat (15.35 miles);
 - parallels existing ROW through Tierra Linda;
 - parallels I-10 between Junction and Kerrville.²⁶⁴
- c. MK 15A (Weinzierl Alternate)
- base cost \$286.6 million;
 - 137.02 mile length;
 - 45 habitable structures within 500 feet;
 - 44% paralleling existing ROW;
 - avoids towns and cities, and Fort McKavett;
 - routes around Kimble County Airport using segments to north of airport;
 - crosses high amount of potential Warbler habitat (15.35 miles);
 - crosses one willing landowner;
 - parallels existing ROW through Tierra Linda;
 - parallels I-10 between Junction and Kerrville.²⁶⁵
- d. MK 15 Modified (PUC Staff Recomm.)
- base cost \$302.3 million;
 - 144.13 mile length;
 - 55 habitable structures within 500 feet;
 - 55% paralleling existing ROW;
 - avoids Fort McKavett;
 - routes around Kimble County Airport using segments to north of airport;
 - crosses high amount of potential Warbler habitat (15.9 miles);
 - crosses one willing landowner;
 - parallels existing ROW through Tierra Linda;
 - parallels I-10 both north of Junction and between Junction and Kerrville.²⁶⁶

²⁶⁴ Weinzierl Ex. 3; See LCRA TSC Ex. 20 (Ex. RRR-3R); LCRA TSC Ex. 26 and observations based on LCRA TSC testimony, intervenor and Staff testimony, and Hearing on the Merits discussions.

²⁶⁵ *Id.*

²⁶⁶ PUC Staff Ex. 1 at 21-25; See LCRA TSC Ex. 20 (Ex. RRR-3R); LCRA TSC Ex. 26 and observations based on LCRA TSC testimony, intervenor and staff testimony, and Hearing on the Merits discussions.

- e. MK 22 (“P-line route”; Opposed by P-line intervenors)
- base cost \$326.4 million;
 - 155.29 mile length;
 - 44 habitable structures within 500 feet;
 - 61% paralleling existing ROW;
 - avoids towns and cities but approaches NW portion of Fredericksburg, and avoids Fort McKavett and Kimble County Airport;
 - crosses less potential Warbler habitat than MK 15 routes but more than LCRA TSC preferred route;
 - avoids Tierra Linda;
 - lower lengths paralleling state, U.S. and interstate highways than MK15 routes.²⁶⁷
- f. MK 23 (P-line route variant)
- base cost \$315.6 million;
 - 151.84 mile length;
 - 43 habitable structures within 500 feet;
 - 53% paralleling existing ROW;
 - other factors similar to MK 22.²⁶⁸
- g. MK 24 (P-line route variant)
- base cost \$315.9 million;
 - 151.5 mile length;
 - 37 habitable structures within 500 feet;
 - 58% paralleling existing ROW;
 - other factors similar to MK 22.²⁶⁹
- h. MK 32 (U.S. Hwy. 277 and I-10 route variant)
- base cost \$349.3 million;
 - 164.42 mile length;
 - 151 habitable structures within 500 feet;
 - 79% paralleling existing ROW;
 - avoids Eldorado, Sonora and Junction but not Kerrville, and avoids Fort McKavett;
 - routes around Kimble County Airport using segments to north of airport;
 - crosses relatively high amount of potential Warbler habitat (17.36 miles);
 - avoids Tierra Linda;
 - very high length paralleling state, U.S. and interstate highways.²⁷⁰

²⁶⁷ LCRA TSC Ex. 26 and observations based on LCRA TSC testimony, intervenor and staff testimony, and Hearing on the Merits discussions; LCRA TSC Ex. 20 (Ex. RRR-3R).

²⁶⁸ LCRA TSC Ex. 26.

²⁶⁹ LCRA TSC Ex. 26.

²⁷⁰ LCRA TSC Ex. 26.

- i. MK 33 (U.S. Hwy 277 and I-10 route variant)
- base cost \$406.8 million;
 - 161.09 mile length;
 - 153 habitable structures within 500 feet;
 - 83% paralleling existing ROW;
 - avoids Eldorado and Sonora, passes through Junction and Kerrville, and avoids Fort McKavett;
 - routes underground along I-10 near Kimble County Airport;
 - crosses between high and low amount of potential Warbler habitat comparable to MK 15 routes (13.23 miles);
 - avoids Tierra Linda;
 - very high length of proposed ROW parallel to state, U.S. and interstate highways.²⁷¹
- j. MK 61 (modified MK 15 with I-10 segments used beginning in SW Gillespie County)
- base cost \$287.3 million;
 - 133.31 mile length;
 - 118 habitable structures within 500 feet;
 - 46% paralleling existing ROW;
 - avoids towns and cities except Kerrville, and Fort McKavett;
 - routes around Kimble County Airport using segments north of airport;
 - crosses relatively high amount of potential Warbler habitat (17.08 miles);
 - avoids Tierra Linda; about half of length parallel to state, U.S. and interstate highways.²⁷²
- k. MK 62 (modified MK 15 PUC Staff Recommended with I-10 segments beginning in SW Gillespie County)
- base cost \$302.9 million;
 - 141.81 mile length;
 - 128 habitable structures within 500 feet;
 - 56% paralleling existing ROW;
 - avoids towns and cities except Kerrville, and Fort McKavett;
 - routes around Kimble County Airport using segments north of airport;
 - crosses relatively high amount of potential Warbler habitat (17.63 miles);
 - crosses one willing landowner;
 - avoids Tierra Linda; about half of length parallel to state, U.S. and interstate highways.²⁷³

²⁷¹ LCRA TSC Ex. 26.

²⁷² LCRA TSC Ex. 26.

²⁷³ LCRA TSC Ex. 26.

2. Routing Adjustments Evaluated by LCRA TSC

During and after the public involvement phase of the project, numerous parties contacted LCRA TSC with requests to modify particular route segments to moderate the impact of a proposed transmission line route on their property. LCRA TSC prepared Attachment 13 to the Application²⁷⁴ and Corrected Supplemental Attachment 13.²⁷⁵ Both documents evaluate the proposed modifications that *were not made* part of the routes contained within the Application.²⁷⁶

The route modifications found in Attachment 13 are all technically feasible from an engineering and environmental perspective and each affect noticed landowners only. However, LCRA TSC did not adopt these modifications due to issues including additional cost, the use of larger angle structures, and an increase in overall length.²⁷⁷

After the filing of the Application, LCRA TSC continued to work with potentially affected landowners. Corrected Supplemental Attachment 13 discusses numerous route modifications that landowners have proposed to mitigate or reduce the impact of the proposed transmission line on their property. Many of these modifications were either proposed in discovery responses or discussed at the Technical Conference held by LCRA TSC on September 1, 2010, or at the Settlement Conferences held by LCRA TSC on September 20, 21, and 22 in Eldorado, Junction, and Fredericksburg, respectively. Each of the proposed modifications, found in Corrected Supplemental Attachment 13, is technically feasible from an engineering and environmental perspective and affects only noticed property owners, but potentially in a different manner, and may add costs and length to the project.

One proposed modification requires separate attention. In the event the Commission

²⁷⁴ LCRA TSC Ex. 1, Attachment 13.

²⁷⁵ LCRA TSC Ex. 1.C. *Corrected Supplemental Information for Attachment 13 to the CREZ CCN Application* (Oct. 25, 2010), Interchange Item No. 3007. See Appendix A and B to LCRA TSC's Initial Brief, summary tables of route modifications from Attachment 13 and Corrected Supplemental Attachment 13.

²⁷⁶ Section 4 of the EA includes the route modifications that have been incorporated into the routes found in the Application.

²⁷⁷ While most of these modifications added cost, a few would decrease the cost of the Project.

considers MK 22, 27, or 46, the Nances, who participated as members of the A3/O4 group, request that the Commission reject the proposed Bannwolf Modification, because it would substantially increase the impact of Link O4 on their property. The Nances argue that the Bannwolf Modification would reroute the line from their northern property boundary through the middle of their 65 acre tract. Mr. Bannwolf does not own property or a habitable structure within 500 feet of the centerline. Nevertheless, Mr. Bannwolf met with LCRA TSC on September 21, 2010, to develop this modification. The Nances were not invited to, nor did they attend this meeting.²⁷⁸ The manner in which the Bannwolf Modification was created was not in keeping with LCRA TSC's typical efforts to develop landowner modifications. Had LCRA TSC been aware of the Nances' objection to the Bannwolf Modification, they would probably not have included it as a possibility for consideration in this docket.²⁷⁹ For these reasons, the ALJs find that the Bannwolf Modification should be rejected.

H. Preliminary Order Issue No. 9

Has LCRA TSC proposed modifications to the transmission improvements described in the CREZ Order? If so: (a) would such improvements reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate; (b) would such modifications speed up the project's implementation timeline, achieve other technical efficiencies, or otherwise be cost-effective and consistent with the CREZ Transmission Plan; and (c) have all such modifications been submitted to the Electric Reliability Council of Texas (ERCOT), and has ERCOT made a recommendation to LCRA TSC to be filed in this proceeding?

LCRA TSC has proposed one modification to the project as it is contained in the CREZ Order in Docket No. 37928. In the Application, LCRA TSC proposed using a different conductor than the one ERCOT assumed in the CTO Study. Based on LCRA TSC's transmission line rating methodology, a transmission line using bundled Merrimack conductor in the location of the Project does not result in the 5000 Amps capacity assumed by ERCOT in its CTO Study. Therefore, LCRA TSC proposes that the 345-kV double-circuit transmission line between the McCamey D and Kendall Stations will be constructed using bundled Cumberland conductor (2x1926.9 Aluminum

²⁷⁸ Tr. at 472-474.

²⁷⁹ Tr. at 478-481.

Conductor Steel Supported/trapezoidal wire (ACSS/TW)) instead of the bundled Merrimack conductor (2x1433 ACSS/TW) that ERCOT assumed in its CTO Study.²⁸⁰ Staff also concluded this modification was cost-effective and consistent with the CTO Study.²⁸¹ ERCOT reviewed the LCRA TSC conductor modification and recommended the use of the bundled Cumberland conductor that LCRA TSC proposes in the Application.²⁸²

I. Preliminary Order Issue No. 10

Are there discrepancies between the estimated total cost included in the Application in this docket and the cost identified for the proposed project in the CREZ Transmission Plan? If so, what are the reasons for the discrepancies?

ERCOT estimated the “overnight” cost for the MK Project at \$257.56 million and 137 miles in length. LCRA TSC’s estimated cost for LCRA TSC’s preferred route MK13 is \$219.5 million, with estimated costs for all 60 evaluated routes ranging from \$199.9 million to \$328.8 million.²⁸³ LCRA TSC’s estimates range, respectively, both below and above ERCOT’s CTO costs for the transmission lines included in this project.²⁸⁴ ERCOT estimated the “overnight” costs for CREZ projects based on unit costs included in the CTO Study. The reasonable variation between LCRA TSC’s projected costs and the ERCOT “overnight” estimates is due to several factors. First, LCRA TSC’s estimates include costs not contemplated by ERCOT, such as costs for potential endangered species habitat mitigation, longer routes, complex terrain, constrained paths, and capitalized interest. Second, LCRA TSC’s estimated construction costs are higher due to project-specific considerations, such as difficulties associated with maneuvering equipment in rugged terrain and drilling foundations in harder geologic substrates typical in the Hill Country area, substantial length changes within the evaluated routes, and endangered species issues.²⁸⁵

²⁸⁰ LCRA TSC Ex. 6 at 17.

²⁸¹ Staff Ex. 1 at 12, 14, 20-21.

²⁸² LCRA TSC Ex. 6 at 19.

²⁸³ LCRA TSC Ex. 7 at 22.

²⁸⁴ LCRA TSC Ex. 14 (Ex. CDS-2REB, table of length and costs by proposed route, at 3).

²⁸⁵ LCRA TSC Ex. 7 at 21, 22. LCRA TSC Exhibits CDS-3 and CDS-4 compare estimated CTO and LCRA TSC route cost and length comparisons for the Project.

Staff concluded that the estimated costs for LCRA TSC's MK routes range from \$251.8 million to \$406.18 million, while the CTO estimate is \$257.56 million.²⁸⁶ Staff explained that the CTO Study assumed straight line lengths for the project which does not account for topography or related constraints in estimating the size and cost of various routes. The CTO estimated a cost of \$1.88 million per mile.²⁸⁷ Staff also notes that on an "apples to apples" basis, the cost of Staff MK15 is \$31.32 million more than the CTO estimate.

J. Supplemental Preliminary Order Issue No. 1

On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding the Application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code?

1. TPWD Participation

TPWD provided recommendations or informational comments regarding the Application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code. In particular, TPWD provided the following comments:

On January 21, 2009, TPWD provided preliminary information and recommendations regarding the entire CREZ Scenario 2 Project to the PUC.

On May 12, 2009, TPWD provided comments to PBS&J on the general study area for the proposed CREZ LCRA TSC Westwind/Kendall-Gillespie-Newton 345 kV transmission line project, which included portions of this Project (Docket No. 38354, Item 173, CCN Application, Attachment I, EA, vol. 111).

On June 2, 2009, TPWD provided comments to PBS&J on the general study area for the proposed CREZ LCRA TSC Twin Buttes-Kendall 345 kV transmission line project, which also included portions of this Project (Docket No. 38354, Item 173, CCN Application, Attachment I, EA, Vol. II1).

²⁸⁶ Staff Ex. 1 at 13; LCRA TSC Ex. 7 at 22 ; LCRA TSC Ex. 1 at Attachment 2.

²⁸⁷ Staff Ex. 1 at 13, 20.

On January 27, 2010, the TPWD provided PBS&J with project-specific Geographic Information System (GIS)-based maps (shape files) of recorded occurrence locations of rare and protected species and other rare resources in the Project Area specific to the development of the EA.

On April 1, 2010, TPWD provided comments to PBS&J on the general study area for the Project (Docket No. 38354, Item 173, CCN Application, Attachment 1, EA, vol. 111).

After receiving the July 28, 2010 notice letter from LCRA TSC as a directly affected landowner of Old Tunnel WMA, TPWD intervened. On September 24, 2010, TPWD sent Staff a letter that included its comments and recommendations concerning the Project.²⁸⁸ TPWD also filed testimony in this docket, was deposed by Staff regarding its specific routing proposals, responded to written discovery from Staff, participated at the hearing on the merits, and filed post-hearing briefing.²⁸⁹

2. TPWD's Recommendations on Routing

The TPWD Letter recommended that the Commission reject all of LCRA TSC's proposed routes, "because insufficient information is available to clearly understand the potential impacts to wildlife, state managed areas and water resources stemming from construction of the proposed alternatives."²⁹⁰ As discussed above in the environmental discussion, TPWD pointed out that due to the lack of access to private property, the lack of TXNDD records at a specific site on an alignment does not mean that the species does not occur there.²⁹¹

Furthermore, TPWD asserts that construction of any of the proposed MK alternatives would require almost entirely new ROW and take significant amounts of existing wildlife habitat. Although the TPWD Letter states its opposition to all routes in the Application, to the extent the

²⁸⁸ Staff Ex. 1 at 13; Staff Ex. 2 at 15.

²⁸⁹ Staff Ex. 1 at 13.

²⁹⁰ Staff Ex. 1, Appendix C at bates 52.

²⁹¹ Staff Ex. 1, Appendix C at bates 55-56.

Commission approves a transmission line in this docket, TPWD supports routes MK32 and MK33 because they would have the least adverse impact on fish and wildlife resources.²⁹²

TPWD's routing arguments have been more thoroughly discussed above in sections regarding environmental issues. Neither Staff nor LCRA TSC agrees with TPWD's recommendations because, when the routes are analyzed using the entirety of the factors in PURA and the Commission's Rules and not focusing solely on the issue of the new fragmentation of wildlife habitat, their preferred routes are superior. Staff also notes that a number of engineering constraints on MK33 near Junction impose additional costs and may result in the delay of the Project's completion.

3. TPWD's Recommendations for Surveying the Project Area and Mitigation of Environmental Impact

Through the communications described above, TPWD also provided comments and recommendations to LCRA TSC and Staff to avoid adverse impacts to migratory birds, rare and protected species, existing wildlife and habitat, unique native plant and animal communities, watercourses, wetlands, ecologically significant stream segments, mussel sanctuaries, and parks and recreation areas.²⁹³ TPWD stated that a significant potential threat to wildlife habitat is the spread of invasive species along the transmission line corridor.²⁹⁴ As a result, TPWD made recommendations to prevent the establishment and spread of invasive species during transmission line construction and revegetation.²⁹⁵ In addition to TPWD's recommendations regarding route selection set out above, TPWD also recommends that a comprehensive mitigation plan be imposed for the life of the project to address impacts to natural resources.²⁹⁶

In response, LCRA TSC and Staff note that some of TPWD's recommendations can be

²⁹² Staff Ex. 7 at 78; TPWD Ex. 5; TPWD Initial Brief.

²⁹³ TPWD Ex. 4 at 9-10; Staff Ex. 1 at 54-55.

²⁹⁴ TPWD Ex. 4 at 18.

²⁹⁵ Staff Ex. 1 at 54-55.

²⁹⁶ TPWD Ex. 4 at 41-42.

implemented, some are already followed by the Company, some should not be implemented, and some are inapplicable to this project.²⁹⁷ Additionally, Staff and LCRA TSC argue that TPWD fails to consider in its analysis other factors that the Commission and the Company must consider and balance in considering the application, including the numerous routing criteria that involve direct impacts on people.²⁹⁸

Nevertheless, the Company specifically represents that it complies with all applicable laws and regulations, including the Migratory Bird Treaty Act and those related to the applicable regulations of the North American Electric Reliability Corporation (NERC), the USFWS, TCEQ, and the United States Army Corps of Engineers (USACE). LCRA TSC also stated that will follow the procedures described in the latest publications for protecting raptors from Avian Power Line Interaction Committee (APLIC).²⁹⁹

LCRA TSC and Staff argue that Staff's recommended Ordering Paragraphs are sufficient to address TPWD recommendations or requests.³⁰⁰ LCRA TSC also argues that TPWD's recommendations or requests should not be implemented in this docket for the reasons discussed below.

LCRA TSC represents that the Company and PBS&J's development of preliminary segments and routes sought to avoid known occupied habitat locations of federally listed endangered or threatened species, based on the TXNDD records and Loomis Partners (Loomis) data for identifying potential Warbler habitat. As a result, the Company notes that the concept of "avoidance first" was used in the routing.³⁰¹

LCRA TSC also argues that TPWD "polygon" information (based on TXNDD) alone does

²⁹⁷ LCRA TSC Ex. 14 at 39.

²⁹⁸ Staff Ex. 7 at 26-27.

²⁹⁹ LCRA TSC Ex. 14 at 39.

³⁰⁰ LCRA TSC Ex. 14 at 41.

³⁰¹ LCRA TSC Ex. 7 at 14; LCRA TSC Ex. 14 at 39-41; LCRA TSC Ex. 20 at 45-48.

not appropriately indicate “avoidance areas” because it establishes very little until considered along with existing land uses, the specific TXNDD element of occurrence data, the requirements of the species and the nature of transmission line impacts (including mitigation). TPWD’s polygon data is useful only as an initial reference point and should not be relied upon for definitive choices between routes.³⁰²

Regarding on-ground surveys, LCRA TSC argues that they cannot be conducted throughout the Project areas, due to the lack of access to private property and the tremendous amount of time and resources required to review the study area. The Company argues that it is more appropriate to conduct a detailed assessment of potential habitat of threatened and endangered species after the Commission has selected a route, to continue consulting with the USFWS, and implement measures to comply with the Endangered Species Act as necessary.³⁰³

The ALJs agree that it would be very inefficient, time-consuming, and costly to conduct such surveys for Project-wide action areas, before the Commission’s approval of a route. As for TPWD’s suggestion that if endangered species habitat is present, “a survey for the presence of the species should be conducted . . .” LCRA TSC has committed to identify potential endangered species habitat along the route approved by the Commission in its dealings with USFWS and does not intend to conduct presence/absence surveys, which could delay the project. The ALJs agree with this approach.³⁰⁴

Because the Project is subject to NERC reliability requirements, including vegetation management, LCRA TSC is required to remove trees, brush, and undergrowth from the ROW that could potentially interfere with the safe and reliable operation of the line. Furthermore, although LCRA TSC typically does not remove low growing ground cover, it must trim trees that overhang the ROW, and it needs to remove vegetation that could potentially interfere with access to the lines. The Company points out that utilities that violate NERC requirements, fail to remove vegetation,

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

and consequently experience outages can be subject to substantial fines. The ALJs agree that LCRA TSC must comply with NERC requirements and reasonably maintain access to the line. Any TPWD recommendation to the contrary must be disregarded.³⁰⁵

Nevertheless, LCRA TSC commits to minimize the amount of flora and fauna disturbed during construction of the line, except to the extent necessary to establish appropriate ROW clearance. After construction of the line, LCRA TSC will determine if any reseeded of the ROW in herbaceous species or a cover of forage crop would be useful and practical to facilitate erosion control. LCRA TSC commits to consider landowner preferences in doing so.³⁰⁶

To the extent practical, LCRA TSC will also avoid or mitigate adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS. LCRA TSC intends to address re-vegetation in its TCEQ-required SWPPP and re-vegetation will be performed to the extent reasonable, feasible, and practical, except where permanent structures (e.g., berms, gabions, retaining structures, etc.) installed by the Company would be used to control erosion and sedimentation. As for wetland disturbance, LCRA TSC intends to coordinate with the USACE concerning any methods or measures to be employed. As a result, LCRA TSC argues that TPWD's, *Guidelines for Construction and Clearing Within Riparian Areas* recommending certain methods be employed in "General Mitigation Measures" and "General Stream Conservation Criteria" are unnecessary. While some of TPWD's recommended methods may already be instituted as acknowledged by the Company, the ALJs find that LCRA TSC's measures are adequate to avoid adverse environmental impacts beyond those necessitated by the installation of the line itself.³⁰⁷

Regarding risks to birds from construction harassment, habitat loss/fragmentation, and collisions/electrocutions, the Company will work with USFWS concerning these issues. LCRA TSC intends to place avian markers for flyways at river crossings, and LCRA TSC's phase spacing for this transmission line far exceeds the minimums in the guides recommended by TPWD (e.g.,

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

Suggested Practices for Raptor Protection on Power Lines and Mitigating Bird Collisions with Power Lines”).³⁰⁸

LCRA TSC states that it does not expect to employ significant channel modification, construct significant stream crossing structures, or conduct significant stream maintenance once an appropriate ROW for the line is established. The Company intends to avoid clearing trees and other vegetation along stream banks, except as necessary to establish an appropriate ROW for the line. LCRA TSC will re-vegetate where reasonable, feasible, and practical. As a result, the Company argues that TPWD’s *Guidelines for Construction and Clearing Within Riparian Areas* recommending certain methods be employed in “Channel Modification,” “Stream Crossing Structures,” and “Stream Maintenance” are unnecessary.³⁰⁹

LCRA TSC argues that it should not be required to develop and implement a compensatory mitigation plan for the life of the project in cooperation with TPWD. The Company notes that it is already working with the jurisdictional authority (USFWS) to determine a permitting mechanism for endangered species in this and other projects. TPWD’s jurisdictional authority does not extend to this project and no state law or regulation requires electric utilities to comply with TPWD’s request or recommendation. The Company argues that the strategies presented in the Application adequately avoid or minimize the impacts on regulated and unregulated native wildlife resources. The ALJs agree with Staff and LCRA TSC on these matters and recommend that their proposals be put in place rather than TPWD’s.³¹⁰

Finally, in the Conclusion and Recommendation sections of their testimony, Mohammed Ally and Brian Almon recommended that the Commission include in its final order paragraphs to mitigate the impact of the Project, including mitigation procedures addressing the discovery of archeological artifacts, raptor protection, herbicide use, flora and fauna disturbance, erosion control, landowner impact, and bird diverters on river crossings. Mr. Ally and Mr. Almon testified that their

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

recommended mitigation paragraphs would address a number of TPWD's concern and other issues are addressed in Staff's routing recommendation.³¹¹ The ALJs agree.

VI. CONCLUSION

While the ALJs would prefer that Routes MK32 or 33 be approved by the Commission for the same reasons TPWD, Weinzierl, and CVA present, the ALJs acknowledge that Staff MK15 represents a more balanced weighing of the Commission's routing criteria and recommend it for Commission approval. As for TPWD's survey and mitigation recommendations, while TPWD raises valid concerns and recommends solutions to those concerns, due to limited resources, time-constraints, practicality, and past practice in other CREZ cases, the ALJ recommend that Staff and LCRA TSC's approaches to these issues be adopted, instead of those proposed by TPWD.

VII. FINDINGS OF FACT

Procedural History, Notice, Jurisdiction, and Project Background

1. LCRA Transmission Services Corporation (LCRA TSC) is a non-profit corporation providing service under Certificate of Convenience and Necessity (CCN) No. 30110.
2. On July 28, 2010, LCRA TSC filed an application with the Public Utility Commission of Texas (Commission) to amend its CCN to include the McCamey D to Kendall to Gillespie Competitive Renewable Energy Zone (CREZ) 345-kV transmission line project (Application). The two lines that comprised this project, McCamey D to Kendall, and Kendall to Gillespie, were identified by ERCOT in its CREZ Transmission Optimization Study (CTO Study), and originally assigned to LCRA TSC to construct as a "Priority Project" in *Commission Staff's Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing (May 15, 2009).
3. On December 1, 2010, the Commission determined that the Kendall to Gillespie portion of the transmission line would be replaced with a cost-effective alternative that does not require the construction of a transmission line between the Kendall and Gillespie substations at this time.

³¹¹ Staff Ex. 1 at 13-16; Staff Ex. 2 at 15-17.

4. LCRA TSC's double-circuit McCamey D to Kendall preferred route and each of the other 59 proposed alternative McCamey D to Kendall routes extend from LCRA TSC's approved McCamey D Station (to be renamed Big Hill Station), located in northern Schleicher County, to the existing Kendall Station in western Kendall County. The alternative McCamey D to Kendall routes proceed generally in a northwesterly to southeasterly direction, in multiple varied corridors. This line may be located in portions of Schleicher, Menard, Mason, Sutton, Kimble, Kerr, Gillespie, and Kendall counties, depending on the route selected.
5. LCRA TSC filed 60 alternate routes. The links in the Application can be combined to form over 20,000 different forward progressing routes.
6. Typical structure heights are expected to be approximately 105-185 feet above the ground surface, depending on the type of structures used.
7. LCRA TSC will install two 345-kV circuits on the transmission line.
8. LCRA TSC will build and own the new McCamey D (Big Hill) Station for the project, which Station will accommodate both the project proposed in this docket and another of its CREZ priority projects (Twin Buttes to McCamey D 345-kV line), as well as another CREZ project of South Texas Electric Cooperative, Inc. (McCamey C to McCamey D 345-kV line) and future wind generation interconnect facilities to be constructed and owned by Electric Transmission Texas at the collection stations associated with the McCamey D Station.
9. LCRA TSC owns the existing Kendall Station, at which additional equipment will be installed to accommodate the termination of the new 345-kV transmission lines for this project.
10. Written direct notice of the Application was mailed on July 28, 2010, to each owner of land whose property would be directly affected by the proposed transmission line.
11. Written direct notice was mailed to several directly-affected landowners whose names had not appeared on LCRA TSC's original list.
12. On July 28, 2010, LCRA TSC also mailed written direct notice of the Application to additional area landowners who might be affected by various potential routing configurations described in the Application and LCRA TSC's direct testimony.
13. Written notice was mailed on July 28, 2010 to the municipalities of Boerne, Comfort, Eldorado, Sonora, Menard, Junction, Mason, Harper, Fredericksburg, Ingram, and Kerrville, and to county officials of Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall counties.
14. Written notice was mailed on July 28, 2010, to nine neighboring utilities providing electric utility service, specifically Bandera Electric Cooperative (BEC), Central Texas Electric Cooperative (CTEC), Pedernales Electric Cooperative (PEC), Southwest Texas Electric Cooperative, Inc. (SwTEC), American Electric Power (AEP) Texas North Company, Cap

Rock Energy Corporation, City of Fredericksburg, Kerrville Public Utility Board (KPUB), and City of Mason.

15. Notice of the Application was published in the following newspapers: *San Angelo Standard Times*, *Eldorado Success*, *Junction Eagle*, *Mason County News*, *Boerne Star and Record*, *Fredericksburg Standard*, *Comfort News*, *San Antonio Express-News*, *Austin American-Statesman*, *Devil's River News*, *Kerrville Daily Times*, *Menard News & Messenger*, *West Kerr Current* and *Harper News*.

Material Deficiencies

16. No material deficiencies exist in the Application.

CREZ Priority Transmission Plan

17. The Application is for a CREZ priority project.
18. The project will accomplish the intended results for the CREZ priority project between the McCamey D and Kendall stations.
19. In addition, the project will also provide increased transmission support to meet growing needs in Central Texas and the Hill Country.

Route

Community Values

20. To address and consider community values, LCRA TSC conducted 20 public meetings on May 4, 2009, May 5, 2009, May 7, 2009, May 11, 2009, May 12, 2009, and May 14, 2009. In addition, LCRA TSC conducted public meetings on February 15 and February 16, 17, 18, 22, 23, and 24, 2010.
21. LCRA TSC considered expressions of community values in a review of the questionnaires, letters, meetings, phone calls, and other public input it has received. LCRA TSC received additional information about community values at the Technical Conference held on September 1, 2010, and at the Settlement Conferences it held on September 20, 21, and 22, 2010.
22. Based on input from the open houses and throughout the proceeding, strong community values included: avoiding the Texas Hill Country; reducing the effect of the line on habitable structures, particularly in developed areas; reducing the effect on rural residential subdivisions, and building the line with monopoles.
23. The community values of avoiding habitable structures in developed areas and avoiding the Hill Country are competing values.
24. Staff MK15 parallels roadways for much of its distance, thereby avoiding much of the Hill Country.
25. Where Staff MK15 parallels I-10, it does not cut a new path through the heart of the Hill Country. I-10 has already cut through the area and Staff MK15 will not cut an entirely new corridor through the area.
26. Staff MK15 parallels other right-of-way (ROW) for over 54% of its length.
27. Staff MK15 deviates around the cities of Junction and Kerrville.
28. Kerrville and the Kerrville Public Utility Board have spend over \$1 million in infrastructure for development along I-10 in the vicinity of Links Y16, Y17b, Y18, Y19b, and Y20, which are included in Routes MK32, 33, 61, and 62.
29. Tierra Linda Ranch, a rural subdivision crossed by Staff MK15 has an existing pipeline easement, which Staff MK15 will parallel.
30. Staff MK15 provides the best balance between the community values of avoiding the Hill Country, and avoiding habitable structures and cities.
31. Monopoles should be used through Tierra Linda Ranch.

Recreational and Park Areas

32. Avoiding parks and recreational areas was a consideration in designing the routes proposed in the Application. PBS&J reviewed U.S. Geological Survey topographic maps, Texas Department of Transportation (TxDOT) county highway maps and federal, state, and local maps, the Texas Parks and Wildlife Department's (TPWD) "Texas Outdoor Recreation Inventory," the Texas Outdoor Recreation Plan, recent aerial photography, and conducted a limited field reconnaissance.
33. MK13 and Staff MK15 each have one park or recreation areas located within 1,000 feet of the centerline. MK32 and MK33 run within 1,000 feet of six and seven parks/recreation areas, respectively.
34. TPWD is the owner and operator of the 16.1 acre Old Tunnel Wildlife Management Area (Old Tunnel WMA), located in Kendall County. The Old Tunnel WMA is comprised of an abandoned railroad tunnel and includes a bat colony of up to three million Brazilian free-tailed bats, three thousand cave myotis. The Old Tunnel WMA includes nature trails for hiking and bird watching, educational programs, bat watching, and guided nature tours. TPWD estimates that 21,324 visitors visited the Old Tunnel to watch bats emerge from the tunnel. TPWD estimates the annual economic benefit to the region of at least \$748,000.
35. The line should avoid the Old Tunnel bat colony.
36. The Texas Historical Commission (THC) owns and operates the Fort McKavett State Historic Site in Menard County, Texas (Fort McKavett), one of the best preserved and most intact examples of a fort from the Texas Indian Wars. The Fort is a State Historic Site, as well as a National Historic District listed on the National Register of Historic Places. Fort McKavett is part of TPWD's Great Texas Wildlife Trails, as well as the THC's Texas Forts Trail. The Fort McKavett State Historical Site is also designated a riparian conservation area.
37. For defensive reasons, the Fort was built between 75 and 100 feet above the surrounding terrain. Transmission towers of up to 180 feet in height may be easily visible from the grounds of the Fort. The towers would range from 1.18 miles (Link b16b), 1.26 miles (Links Z1 and Z2), and 1.55 miles (Link b17b) from the Fort. The Fort remains isolated from modern development, with pristine views in all directions; the view from the Fort is much as it was in the mid-nineteenth century. The Fort hosts living history events, star parties, Boy Scout functions, and visitor tours throughout the year. Transmission towers of up to 180 feet in height would directly and negatively impact those view sheds from the Fort, and would likewise negatively impact the Fort's historic character, its isolation, and the overall appeal of the Site.
38. Camp Sol Mayer is a 300-acre Boy Scout camp with 18 permanent buildings. Link b17b would cross the southwest corner of the camp, passing near several camping areas and near

where the camp's horses are maintained. ROW clearing for the transmission line on the southwest portion of the camp would eliminate many trees that are along the western boundary line and the San Saba River. The camp would also be impacted by Links Z1 and Z2, which are both in close proximity to the camp.

Aesthetic and Historical Values

Aesthetics

39. "Aesthetics" refers to the subjective perception of natural beauty in the landscape and attempts to define and measure an area's scenic qualities. Aesthetic values considered from a public standpoint in the Environmental Assessment and Alternative Route Analysis (EA), include topographical variation, prominence of water in the landscape, vegetation variety, diversity of scenic elements, degree of human development or alteration, and overall uniqueness of the scenic environment compared to the larger region.
40. The Project area reflects overall a medium to high level of aesthetic value for the region. The eastern portion of the study area, located in the Hill Country, is within an area of the state noted for its scenic beauty and characterized by impressive topographical relief, vegetation and wildflowers, abundant wildlife, and plateaus. The presence of various large creeks and rivers present some viewscapes of high aesthetic value. There are also a number of designated routes or trails, and scenic overlooks and rest areas, within the study area that emphasize the Hill Country's natural beauty and other unique attractions.
41. The level of human impact to the study area is relatively high, due to the extensive agricultural and oil and gas operations, the development of numerous cities, and the development of rural subdivisions.
42. All of the 60 primary alternative routes for the MK Project have some amount of ROW within the foreground visual zone of U.S. and state highways, in part a direct result of the deliberate inclusion of alternative routes paralleling U.S. and state highways.
43. A large number of parks and recreation areas are located within the study area. Only a small portion of the routes' ROW would be located within the foreground visual zone of parks and recreation areas.
44. The alternative routes that follow all or portions of I-10 will be much more visible to more people than any of the alternative routes away from I-10.
45. Construction of the Project will likely have both temporary and permanent negative aesthetic impacts, including views of ongoing construction, the cleared ROW, and the transmission facilities.
46. Wherever monopole structures are approved, LCRA TSC will have the flexibility in design to deploy both steel and spun concrete poles where appropriate for each to produce a cost-effective result.

47. Both lattice towers and monopoles will fit within a 100-foot ROW, which is as narrow as the ROW for a double-circuit 345-kV transmission line can be made.
48. MK13 has a length of 8.46 miles visible from US and State highways. Staff MK15 has a visibility for a length of 49.11 miles from US and State highways. MK33 has a length of 157.87 miles along US and State highways.
49. MK33 has the highest visibility from parks/recreation areas with a length of 10 miles visible from state parks and recreational areas. MK13 is visible for a length of 4.24 miles from state parks and recreation areas. Staff MK15 is visible for a length of 4.43 miles from parks/recreation areas.
50. The aesthetic impact of the line is largely a function of who is viewing it from where.
51. The central Project area contains large tracts of relatively unfragmented and undeveloped land. The natural beauty of this part of the Project area includes scenic vistas, meadows, and oak-lined creeks and rivers.
52. I-10 is a means of transportation across the state, where aesthetically pleasing views are incidental. Travelers and anyone in the proximity of I-10 in the Project area will see commercial development including gas stations, convenience stores, chain and fast-food restaurants, strip malls, traffic – including heavy tractor-trailers, car lots, power lines, roadways – including feeder roads, and all of the development associated with small towns, larger municipalities, and cities like San Antonio. It is far more likely that a 345-kV line will be lost in the visual foreground along I-10 than if it were run along a central or northern route through what is undoubtedly the aesthetically pleasing and relatively undeveloped Texas Hill Country.

Archeological and Cultural Resources

53. Much of the study area has a high probability of containing previously unrecorded cultural resource sites. PBS&J's cultural resources evaluation was based on known data regarding sites in the area, the density of the sites, and the National Register of Historic Places (NRHP) and State Archaeological Landmark (SAL) potential for the sites.
54. Of the 60 primary alternative routes evaluated for the Project, 54 cross one or more recorded historic or prehistoric sites, with four routes crossing at least 15 or more sites. All 60 routes have additional recorded historic or prehistoric sites within 1,000 feet of the ROW centerline, with numbers ranging between 6 and 46 sites. Of the primary alternative routes, 22 cross one NRHP-listed or determined eligible site, and the other 38 cross no such sites. Exactly half of the primary alternative routes have ROW centerline within 1,000 feet of one or more additional NRHP-listed or determined eligible sites, ranging from one to six sites, and the other 30 have none. The number of recorded historical/archaeological sites within 1,000 feet of the centerline of the routes varies from 8 to 70 sites.

55. There are 23 known or recorded historical or archeological sites either crossed (two sites) or located within 1,000 feet of the MK13 ROW centerline (21 sites). On Staff MK15, there are 47 sites.
56. Mitigation and construction practices are available to reduce or eliminate impacts to cultural resources sites. LCRA TSC planned appropriately for addressing any sites encountered during construction.
57. None of the route segments proposed in this case cross Fort McKavett.
58. MK13 does not avoid historical areas in the southeastern portion of the study area.
59. MK15 crosses 7.5 fewer miles of ROW across areas of high archeological/historical site potential than MK13. MK15 also has three fewer National Register-listed or determined-eligible sites within 1,000 ft of the centerline of the ROW than MK13.
60. Routes parallel to I-10 include commercial and residential development normally associated with proximity to an interstate highway system. Historical and cultural sites in these areas are more likely to have been disturbed than those in the central and northern Project areas.

Environmental Integrity

General, Surveys, and Mitigation

61. LCRA TSC's consultant PBS&J, examined a wide range of environmental information in its EA, which was researched and analyzed through a variety of methods and by representatives of various environmental disciplines.
62. LCRA TSC represents that all routes presented in the Application (and all segments that form those routes) provide environmentally acceptable alternatives.
63. LCRA TSC's preferred route (MK13) was ranked first from an ecological standpoint in the EA.
64. LCRA TSC avoided specific known occupied habitat locations in the process of delineating preliminary route links and alternative routes.
65. The Company has undertaken a permitting process under Section 10 of the Endangered Species Act with the U.S. Fish and Wildlife Service (USFWS) to consider impacts to federally listed species and their habitat.
66. Animal species potentially occurring along the proposed transmission routes include, but are not limited to, the federally listed (endangered) Black-Capped Vireo (Vireo) and Golden-

Checked Warbler (Warbler), and the state-listed (threatened) Zone-Tailed Hawk, Bald Eagle, Texas Tortoise, and Texas Horned Lizard.

67. The EA lists all threatened or endangered species of potential occurrence in the study area based on information from USFWS, TPWD, and TPWD's Natural Diversity Database (TXNDD).
68. Once a route is selected, LCRA TSC will account for the location of endangered/threatened species on individual landowners' property or additional known occupied habitat by routing adjustments, construction procedures and techniques, and mitigation. The Company shall consult with the USFWS for known occupied or potential habitat for endangered species.
69. LCRA TSC will use a Habitat Conservation Plan (HCP) development and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS.
70. Prior to construction, an assessment will be made to verify whether any habitat for endangered or threatened species is present along the route that is approved. LCRA TSC will seek a permit from USFWS to take endangered species habitat.
71. Different techniques are available to accommodate all federally-listed endangered species identified in the study area. If a route passes through an area containing plant species composition and configuration favorable to a protected species, or if known individuals of the species are in the area, LCRA TSC will adjust the route in minor ways to avoid higher quality "blocks" of habitat; transmission towers will be placed in existing "openings" to limit further clearing for ROW access; and/or permits will be sought for appropriate clearing permissions along with possible mitigation.
72. LCRA TSC will undertake mitigation projects to protect the habitats of Warbler, Vireo and other species.

Fragmentation and Oak Wilt

73. Wildlife habitat throughout the study area is fragmented by land use impacts such as roads, brush clearing associated with ranching and agricultural activities, pipelines, electric distribution lines, and other activities normally engaged in by landowners in the Study Area.
74. The Project will not jeopardize the continued existence of Warbler or Vireo.
75. Staff concluded that any route selected in this case will affect the environmental integrity of the study area.
76. Due to lack of access to private property, the absence of TXNDD records at a specific site within the Project area does not mean that the species does not occur there. Most TXNDD records are gathered from publicly accessible lands, such as parks and wildlife management areas and highway ROW. Most of the impacted Project area consists of privately owned

ranch land. Endangered species and their habitat on private lands may not be reflected in TXNDD records due to the lack of access and state laws governing the collection and dissemination of biological information from private lands.

77. Major highway ROW comprises the largest corridors of habitat fragmentation in the Project area, particularly the I-10 corridor. Avoiding additional fragmentation of wildlife habitat is one of the most important environmental considerations for the Project. Land fragmentation, and its consequence, is one of the greatest statewide challenges to wildlife management and conservation in Texas.
78. The portion of the Project area north of I-10 contains some of the largest blocks of unfragmented wildlife habitat on the Edwards Plateau.
79. The I-10 corridor is fragmented to a much greater extent than the central routes or northern routes.
80. MK13 and all of the links contributing to the central routes cut through the middle section of lands managed by the Doss-Harper Wildlife Management Association. Landowners who are members of the Doss-Harper Wildlife Management Association manage their wildlife resources in a cooperative that helps them overcome some of the inefficiencies common to land fragmentation. MK13 would run through the center of the Doss-Harper WMA for approximately 12 miles.
81. Additional fragmentation of wildlife habitat is expected to spread Oak Wilt disease. Oak Wilt is caused by a fungus that clogs water-conducting vessels in infected oak trees, causing them to wilt and die. Oak Wilt can be spread through the roots of oak trees. Oak Wilt can also be spread much greater distances by sap-feeding beetles that carry spores from infected trees and deposit them on "wounds" in uninfected trees. Once a new tree is infected, the disease will spread through root contact to other nearby trees at a rate of approximately 75 feet per year.
82. The central portion of the Hill Country is currently impacted by very little Oak Wilt. Oak trees in the Project are susceptible to Oak Wilt as a result of cutting and pruning necessary to clear and maintain the ROW. It is estimated that approximately 700 to 1,600 live oaks per mile will be removed and another 200-500 live oaks per mile will need to be pruned.
83. The selection of MK13 or a central or northern route is expected to spread Oak Wilt more than a route that uses the I-10 corridor such as MK32, MK33, or Staff MK15.

Warbler and Vireo

84. Potential habitat for Vireo and Warbler is likely to be encountered along most of the routes. Data provided by Loomis Partners, Inc. documents that all of the routes cross potential Warbler habitat. There are known occurrences of the Vireo and Warbler along or near segments proposed as part of route alternatives for the Project.

85. Without ground inspection of particular ecological areas, it is difficult to impossible to determine the presence of suitable habitat for Vireo. Vireo habitat consists of patchy shrubs interspersed with open areas and cannot be identified by aerial photography.
86. Inhabited Vireo habitat occurs throughout the area and along most, if not all, routes. It is unlikely that potential habitat and actual Vireo can be avoided as part of the certification process.
87. Based on the Commission's past practices and the work of utilities with USFWS, accommodations for Vireo can be made through structure placement, ROW clearance and other forms of mitigation.
88. Due to species composition and configuration, it is possible to identify and map potential Warbler habitat with some accuracy through certain types of aerial photography. Attempts can then be made to minimize/avoid potential habitat.
89. Warbler populations are not inconsistent with either existing or newly-constructed transmission line ROW.
90. Transmission line projects in Texas have been successfully constructed through known occupied habitat for Warbler and Vireo.
91. The Project will have some acceptable impact on the Vireo and Warbler. LCRA TSC can institute avoidance and mitigation efforts to minimize any impact on these species.

Creeks, Streams and Rivers

92. Length parallel to streams and rivers is a highly significant environmental factor. MK13 has 1.34 miles parallel to rivers and streams. MK32 and MK33 parallel 1.93 and 1.82 miles, respectively. Staff MK15 parallels to streams and rivers for 2.46 miles. The P-Line routes range between 3.49 and 3.73 miles.
93. Staff MK15 and MK32 have two river crossings. MK13 and MK33 have four river crossings. MK22, MK23, and MK24 have five river crossings each.
94. MK13 and MK33 have 144 and 143 stream crossings, respectively. MK32 has 154 stream crossings. Staff MK15 has 160 stream crossings. MK22, MK23, and MK24 cross between 186 and 190 streams each.
95. Creek and river crossings can be spanned by the line in a manner that is technically feasible and minimally disruptive of natural resources in the surrounding area. For construction near rivers and creeks, LCRA TSC will implement appropriate erosion control measures as described in sections 1.5, 5.1.2, 5.1.3, and 5.1.4 of the EA. LCRA TSC will also develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to prevent silting of

bodies of water, including creeks, rivers, and springs. The SWPPP will be in effect during all phases of construction and until re-growth is achieved.

96. TPWD strongly recommends that the Project avoid any adverse impacts to Ecologically Significant Stream Segments (ESSS).
97. All of the route options would cross at least one ESSS and many of the routes will cross more than one ESSS, some at more sensitive locations than others.
98. LCRA TSC expects no adverse impact to ESSSs in light of the Company's proposals for spanning creeks and other measures that are intended to be minimally disruptive of natural resources in the surrounding area.
99. All routes using Links b21c or z4, b33 or z5, b34, or b35a, will cross the James River ESSS, and the majority of central routes use one of these links. All routes that use Links b44, b50b, b52, or O3 would cross the Pedernales River ESSS (most of the routes use one of these links). MK13 crosses both the James River on Link b33 and the Pedernales River on Link b50b.
100. Staff MK15, MK32, and MK33 do not cross the James or Pedernales Rivers. These routes travel contain a single ESSS crossing—the Fessenden Branch crossing on Link b29d, which is at a previously disturbed location, because the stream is already crossed by I-10.
101. Potential impacts to mussel species are expected to be minimal. LCRA TSC's construction techniques are adequate to deal with potential impacts to mussel species.
102. Although LCRA TSC can safely span creeks and streams, due to potential risks to mussel sanctuaries, karstic formations, and ESSS, the P-Lines, MK13, and central routes are less attractive from an environmental perspective than routes that parallel I-10.

Old Tunnel WMA and Bat Issues

103. The Eckert James River Bat Cave Preserve is located on MK13, with one of the largest known concentrations of breeding Mexican free-tailed bats located near Links b34 and b36.
104. The Old Tunnel WMA also has a bat colony located near Links A3 and O4. Based on observed flight patterns, the bats at Old Tunnel WMA are expected to fly into the area of the line.
105. For Link A3 and O4 structure designs, all conductor-to-conductor and conductor-to-tower clearances are well above the recommended clearance of 60 inches, minimizing the risk of electrocution to bats.
106. Although there is no evidence regarding bat collisions with the existing 138-kV line near Old Tunnel WMA, there is some scientific evidence that suggests that power lines pose some risk

to birds and bats due to subsonic, ultrasonic and ambient noise, and electromagnetic radiation.

Goal for Renewable Energy

107. The Project is necessary to deliver renewable energy generated in the CREZ.

Engineering Constraints

108. Staff MK15 will be constructed in new areas and parallel to existing ROW. New easements will vary from an estimated minimum easement width of 100 feet to an estimated maximum easement width of 160 feet, and these widths are sufficient for all LCRA TSC structure types.
109. LCRA TSC will design and construct the proposed transmission line to meet nationally recognized guidelines and specifications, including the applicable version of the National Electrical Safety Code (NESC), as well as established regional electric system planning criteria to address various categories of contingency conditions and applicable PUC rules, in order to operate the proposed transmission line in a safe and reliable manner.
110. The Kimble County Airport presents a significant engineering constraint when routing to the south.
111. Links b19b and b19c, north of the airport will be built below the crest of an existing hill and will not create a new aerial obstruction.
112. LCRA TSC can modify the design of Links b19b and b19c if the Federal Aviation Administration requires modifications.
113. Link Y11, south of the airport is part of MK33. It would be located approximately 1,200 to 1,800 feet from the south end of the airport's runway.
114. Link Y11 would run through a flood plain north of the Llano River.
115. Link Y11 cannot be moved further south because it would encroach on the City of Junction.
116. LCRA TSC cannot build a safe and reliable transmission line along Link Y11 using above-ground construction.
117. Because of the engineering constraints, Link Y11 would have to be built underground at the cost of \$54 million for one-half mile, and is prohibitively expensive.
118. Staff MK15 deviates to the north of the Kimble County Airport using Links b19b and b19c and does not require underground construction.

Costs, Compatible ROW, and Prudent Avoidance

119. LCRA TSC's estimated transmission line costs for all routes range from \$251.8 million to \$406.8 million.
120. LCRA TSC's preferred route would cost approximately \$266.4 million. MK33 would cost approximately \$406.8 million. Staff MK15 is estimated to cost \$302.3 million.
121. The lower cost of MK13 does not outweigh the benefits associated with paralleling more ROW.
122. Staff MK15 parallels compatible ROW for more than 54% of its length and avoids much ranch land located in the central part of the study area.
123. Staff MK15 uses Links b84 and b86 along which one landowner has consented to the line.
124. Staff MK15 affects 55 habitable structures.
125. Staff MK15 complies with the Commission's policy on prudent avoidance.
126. LCRA TSC's proposed alternative routes reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields (EMF).
127. The project design incorporates, where technically feasible, optimal phasing arrangements and ground clearance heights that result in lower EMF levels, which is consistent with prudent avoidance from an engineering perspective.
128. The EMF levels from this project are within the range of the fields that people can experience every day in normal living and working environments and are substantially below the EMF exposure limits adopted by recognized international organizations.
129. Based on the current scientific research, there is no reliable scientific basis to conclude that exposure to power frequency EMF from the line will cause or contribute to adverse health effects in people or animals.

Alternative Routes with Less Impact

130. Staff identified a number of minor route adjustments that can be made at a reasonable cost and those adjustments are adopted along Staff MK15.
131. LCRA TSC identified landowner-proposed route modifications.
132. LCRA TSC made some modifications before filing the Application.
133. As part of LCRA TSC's analysis of landowner-proposed segment modifications not incorporated into LCRA TSC's proposed routes, whether proposed by the landowner before or after the CCN Application filing, LCRA TSC has provided estimates of the modified

route length and cost associated with each of these modifications. This information facilitates the Commission's consideration of these landowner proposals.

134. These landowner-requested routing adjustments mapped and reviewed in LCRA TSC's Attachment 13 (as supplemented) are generally longer and generally require more angle structures than LCRA TSC's filed routes in those respective locations. These requested adjustments are generally in the same land use/habitat types as the filed routes in those locations and they are feasible adjustments from an environmental standpoint if the Commission chooses to approve any or all of them.
135. These routing adjustments affect only noticed landowners in a potentially different manner than shown in LCRA TSC's proposed routes and may add length and cost.
136. No landowner has offered financial contribution relating to alternative routes or route modifications.
137. The Bannwolf Modification would reroute Link O4 from a northern property boundary through the middle of the property belong to Mr. and Mrs. Nance.
138. The Bannwolf Modification is not adopted.
139. It is reasonable for LCRA TSC to use monopoles through the Tierra Linda Ranch subdivision along Link b56.

Proposed Modifications to CREZ Order

140. LCRA TSC proposes to use bundled Cumberland conductor (2x1926.9 Aluminum Conductor Steel Supported/trapezoidal wire (ACSS/TW)) instead of the bundled Merrimack conductor (2x1433 ACSS/TW) that ERCOT assumed in its CTO Study.
141. Staff and ERCOT recommend the use of the bundled Cumberland conductor.
142. LCRA TSC's proposed modification to use the bundled Cumberland conductor is approved.

Cost Discrepancies

143. ERCOT estimated the overnight cost for the Project at \$257.56 million and 137 miles in length.
144. LCRA TSC's estimated cost for Staff MK15 is \$302.3 million.
145. LCRA TSC's estimates include costs not contemplated by ERCOT, including endangered species habitat mitigation, longer routes, complex terrain, constrained paths, and capitalized interest.

- 146. LCRA TSC's estimated construction costs are higher due to maneuvering equipment in rugged terrain and drilling foundations in harder geologic substrates typical in the Hill Country area.
- 147. LCRA TSC's estimated costs are reasonable even though they vary from ERCOT's estimate.

TPWD Comments and Recommendations

- 148. TPWD provided comments and recommendations regarding the Project in a letter dated September 24, 2010 (TPWD Letter) and through the testimony of four TPWD witnesses.
- 149. The TPWD letter and evidence addressed issues related to ecology and the environment. TPWD did not consider other factors that the Commission and utilities must consider and balance in CCN applications, including the numerous routing criteria that involve direct effects on people.
- 150. TPWD concluded that construction of any of the proposed routes would require almost entirely new ROW and take significant amounts of existing wildlife habitat.
- 151. TPWD concluded that routes MK32 and MK33 would have the least adverse impact on fish and wildlife resources.
- 152. TPWD owns and operates the 16.1 acre Old Tunnel WMA in Kendall County, Texas, located within 500 feet of Links A3 and O4, the latter of which is part of proposed route MK 22. TPWD opposes all routes that use Links A3 or O4 because of the expected negative impact to the public benefits of Old Tunnel WMA, and the Old Tunnel bat colony.
- 153. Once the Commission approves a route, LCRA TSC can access private property and perform a survey of the area, and if permits are necessary, apply for and comply with all permit conditions.
- 154. LCRA TSC does not have access to private property prior to the selection of a route.
- 155. No requirement exists for a particular methodology for assessment of endangered species for the examination by the Commission of the "environmental integrity" factor. The Commission's acceptance of the "known habitat" analysis is not prohibited by any regulatory requirements.
- 156. LCRA TSC must comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water prevention, and all other environmental concerns.
- 157. The recommended Ordering Paragraphs are sufficient to address TPWD's recommendations or requests.

VIII. CONCLUSIONS OF LAW

1. LCRA TSC is an electric utility as defined in Public Utility Regulatory Act (PURA) §§11.004 and 31.002(6).
2. The Commission has jurisdiction over this matter pursuant to PURA §§14.001, 32.001, 37.051, 37.053, 37.054, 37.056, and 39.203(e).
3. LCRA TSC filed its CREZ CCN Application in this docket on July 28, 2010, in conformance with the Commission's standard CREZ CCN Application form and the Commission's Orders in P.U.C. Docket Nos. 33672 and 35665. LCRA TSC's Application has met the filing requirements set forth in P.U.C. SUBST. R. § 25.216(g)(2) and (3).
4. LCRA TSC provided proper notice of the Application in compliance with PURA §37.054 and P.U.C. PROC. R. 22.52(a).
5. LCRA TSC's Application is sufficient under P.U.C. SUBST. R. 25.216(g)(2) and (3).
6. LCRA TSC's notice of its Application was adequate.
7. SOAH exercised jurisdiction over this docket pursuant to PURA §14.053 and TEX. GOV'T CODE ANN. §2003.049.
8. This docket was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001.
9. LCRA TSC is entitled to approval of the Application, as described in the findings of fact, using Staff's MK15, taking into consideration the factors set out in PURA §37.056 and P.U.C. SUBST. R. 25.101.
10. Staff MK15 complies with all aspects of PURA §37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
11. The Project, as a CREZ transmission project identified in Docket No. 35665, is exempt under PURA §§39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement of proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address 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, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.
12. The Proposed Project is consistent with the Commission's goals for the CREZ program and P.U.C. SUBST. R. 25.174 in that it provides (1) long-term cost effective solutions consistent

with the Final Order in Docket No. 35665, and (2) transmission facilities consistent with ERCOT's recommendations to be constructed as soon as possible to relieve existing and growing constraints in delivering wind generation and placed in service.

13. The Project is consistent with and in furtherance of the goals and mandates of PURA § 39.904.
14. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient under PURA §39.904(g)(3) to grant LCRA TSC's Application for a CCN in this docket.

IX. ORDERING PARAGRAPHS

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

1. LCRA TSC's CCN is amended and LCRA TSC's Application to build a new 345-kV double-circuit transmission lines that extend from the McCamey D Switching Station to the Kendall Switching Station is approved. The Project will follow the route described as Staff Route MK15.
2. LCRA TSC shall implement erosion control measures as appropriate. LCRA TSC shall return each affected landowner's property to its original contours and grades except to the extent necessary to establish appropriate right-of-way, structure sites, setup sites, and access for the transmission line or unless otherwise agreed to by the landowner.
3. In the event LCRA TSC or its contractors encounter any archaeological artifacts or other cultural resources during construction of the Project, LCRA TSC shall cease work immediately in the vicinity of the resource and report the discovery to the Texas Historical Commission (THC) and take action as directed by the THC.
4. LCRA TSC shall follow the procedures outlined in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by APLIC in April 2005.
5. LCRA TSC shall install bird diverters at all river crossings.
6. LCRA TSC shall minimize the amount of flora and fauna disturbed during construction of the Project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line. LCRA TSC shall re-vegetate using native species considering


landowner preferences and avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.

7. LCRA TSC shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides for controlling vegetation within the right-of-way and that such herbicide use comply with rules and guidelines established in the *Federal Insecticide, Fungicide and Rodenticide Act* and with the Texas Department of Agriculture regulations.
8. LCRA TSC shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the Project. Any minor deviations in the approved route shall only directly affect landowners who received 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.
9. LCRA TSC shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b). In addition, LCRA TSC shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.

10. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED December 16, 2010.



WENDY K.L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Selected Route Composition

McCamey-D-Kendall-Gillespie Project

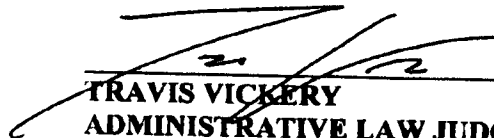
Route	Segments
MK13	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b18-b20-b22a-b22b-b22c-b34-b36-b50a-b50b-c7a-c7-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 / Weinzierl Preferred	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b19aa-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15A Weinzierl Alternate	b3a-b5a-b5b-b14a-b14ba-b84-b86-b86a-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Modified PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Alternate PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c12a-c12b-c12c-c19-c20-c21
MK15 Segrest	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK22	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O2-O4-c13c-c13d-c19-c20-c21
MK23	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-O7-c12b-O8-c13d-c19-c20-c21
MK24	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-c13e-c13b-c13c-c13d-c19-c20-c21
MK32	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y8-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK33	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
Additional Routes along IH-10 past Segment b29d	
MK61 (modified MK15 / Weinzierl Pref.)	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b19aa-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK62 (modified MK15 Modified PUC Staff)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK63 (modified MK15 Segrest)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21

10. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED December 16, 2010.



WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

CRITERIA FOR SELECTED ROUTES (EXCLUDING MODIFICATIONS)
MCCAMEY D-KENDALL-GILLESPIE 345-KV PROJECT
MCCAMEY D-KENDALL

[illegible]

Selected Route Composition

McCamey-D-Kendall-Gillespie Project

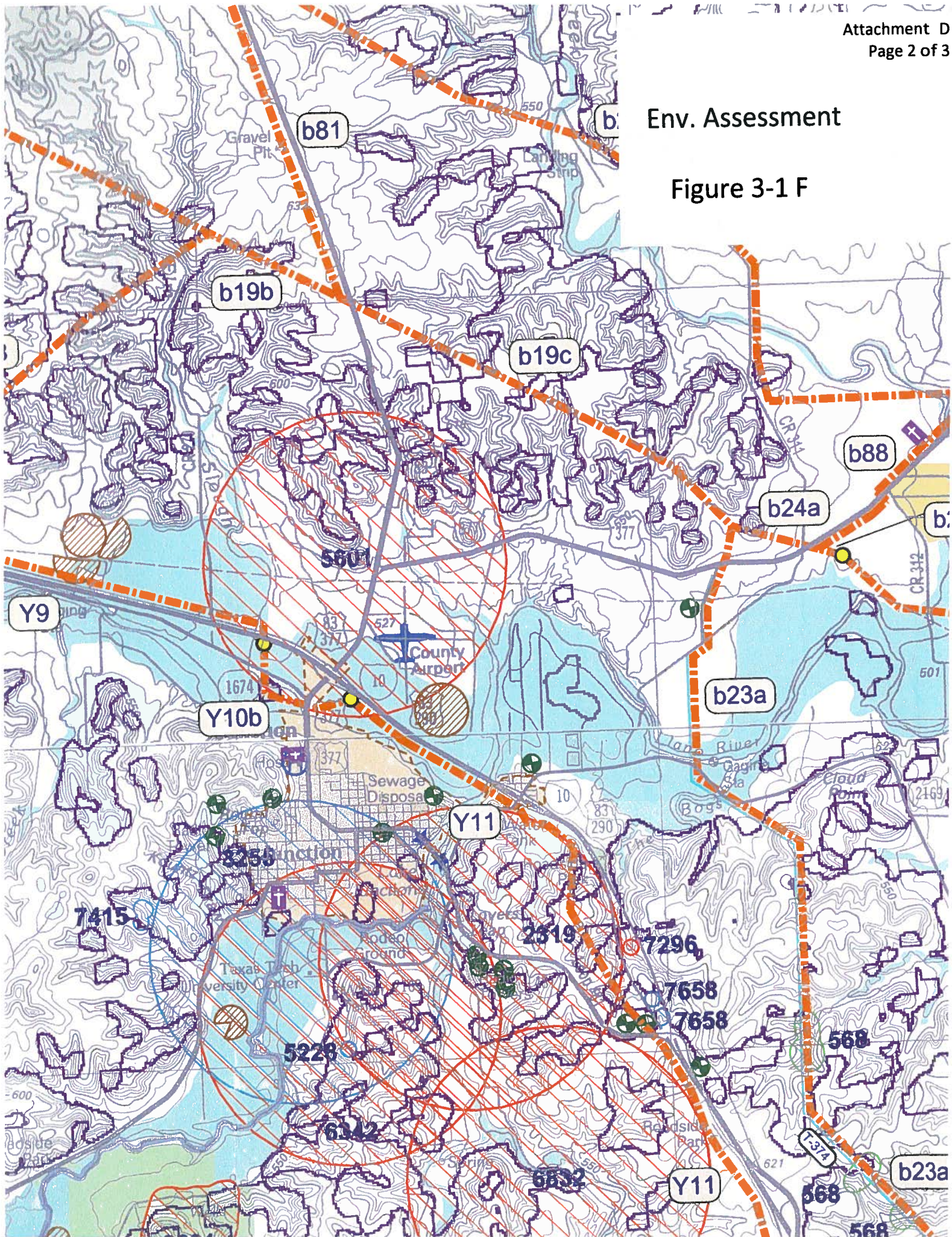
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MK15 / Weinzierl Preferred	b3a-b5a-b5b-b14a-b14ba-b14bb-b14c-b19aa-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15A Weinzierl Alternate	b3a-b5a-b5b-b14a-b14ba-b84-b86-b86a-b19ab-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Modified PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
MK15 Alternate PUC Staff	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c12a-c12b-c12c-c19-c20-c21
MK15 Segrest	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-b48-b53-b56-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21
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MK23	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-O7-c12b-O8-c13d-c19-c20-c21
MK24	b3a-b3b-b10-b13aa-b83-P1-P2b-P3-P4b-P5-P6a-P7-P8b-P9-O1-O3-O6-c13e-c13b-c13c-c13d-c19-c20-c21
MK32	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y8-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK33	b3a-b5a-Y1-Y2b-Y2c-Y3a-Y4-Y5c-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
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MK62 (modified MK15 Modified PUC Staff)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-y5cc-y7b-y8-b19b-b19c-b23a-b23b-b29a-y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21
MK63 (modified MK15 Segrest)	b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21

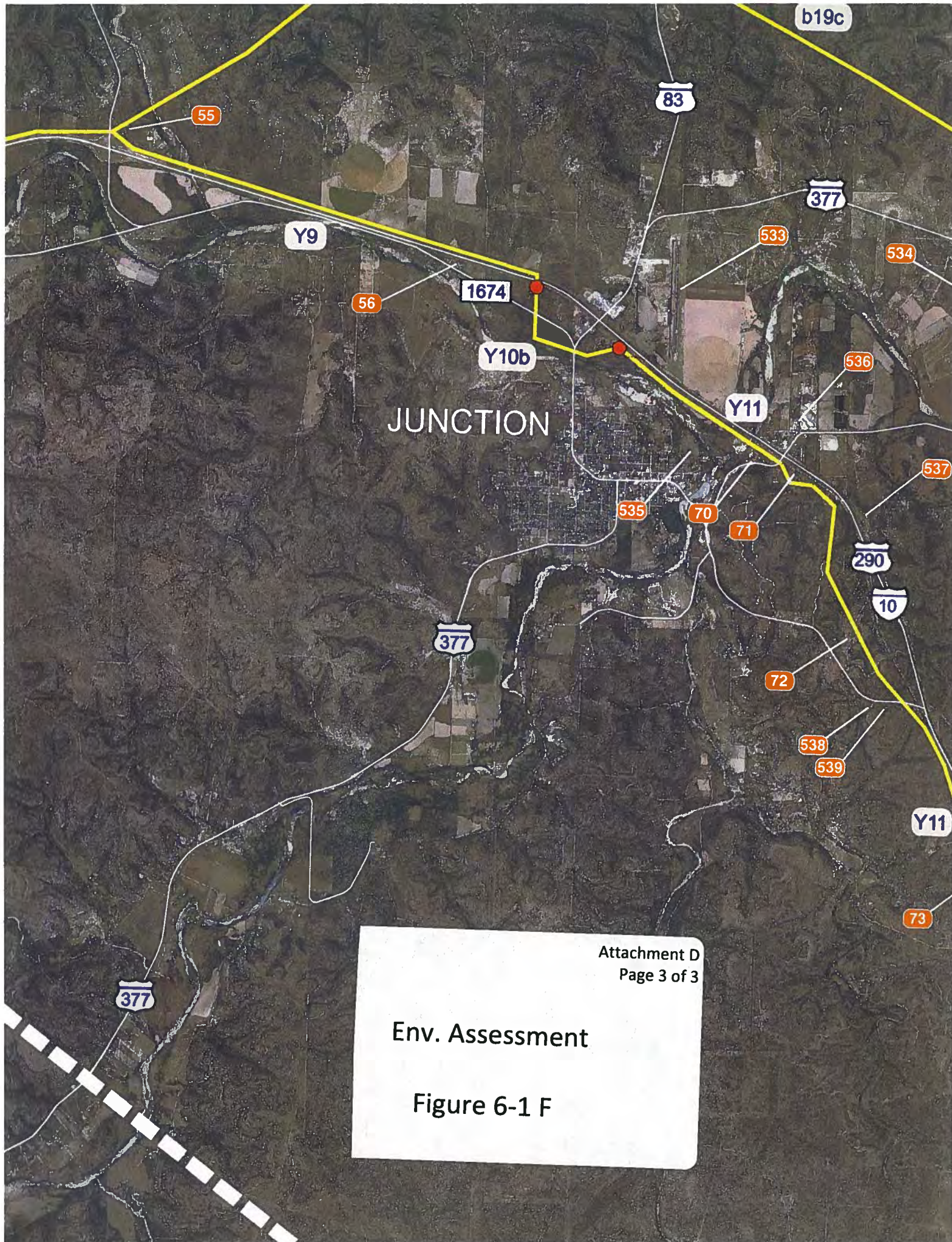
Application
Attachment 3
Sheet 16 of 28
(8/24/10 Rev.)



Env. Assessment

Figure 3-1 F

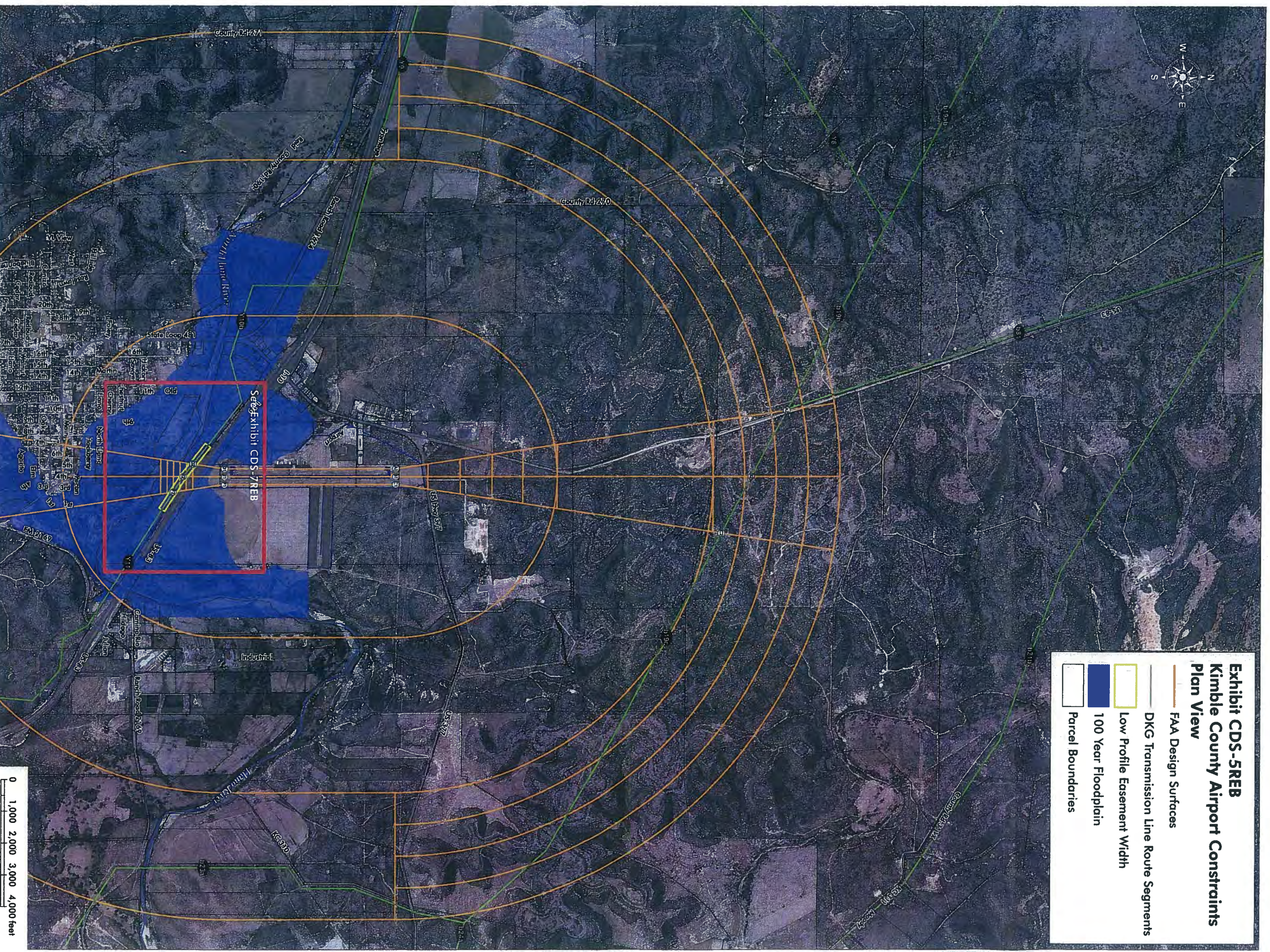




Attachment D
Page 3 of 3

Env. Assessment

Figure 6-1 F



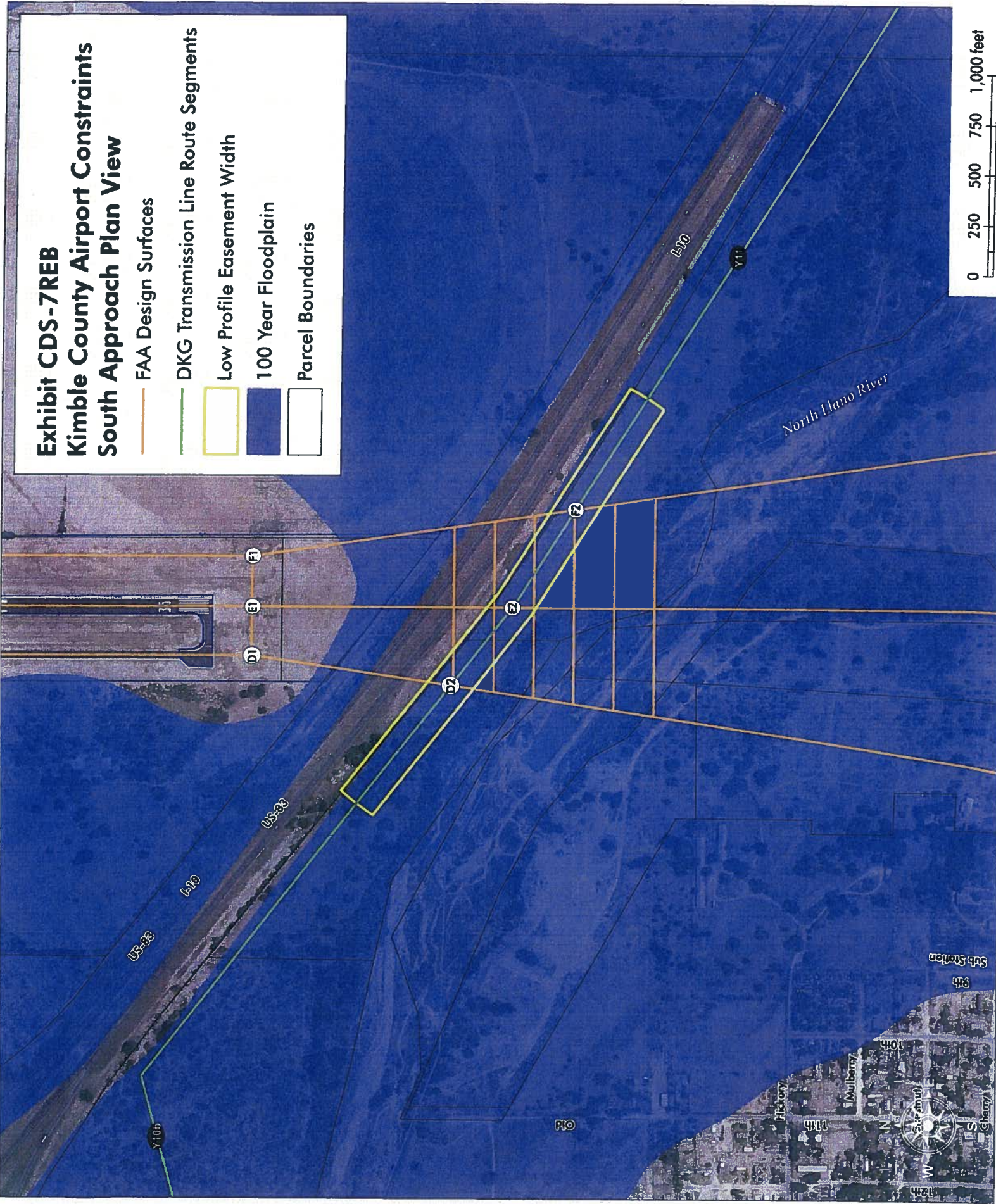
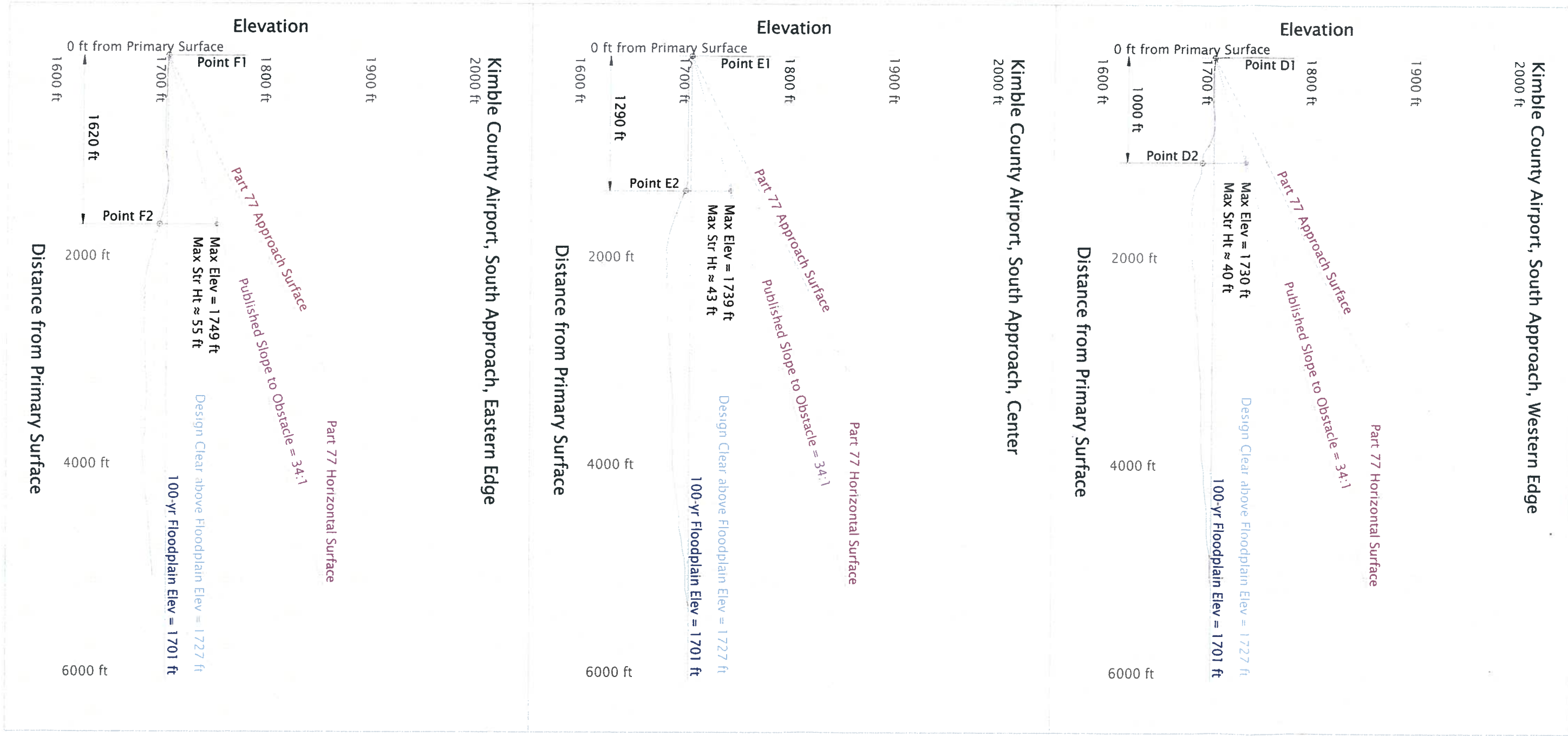


Exhibit CDS-8REB: Kimble County Airport Constraints - South Approach Profiles



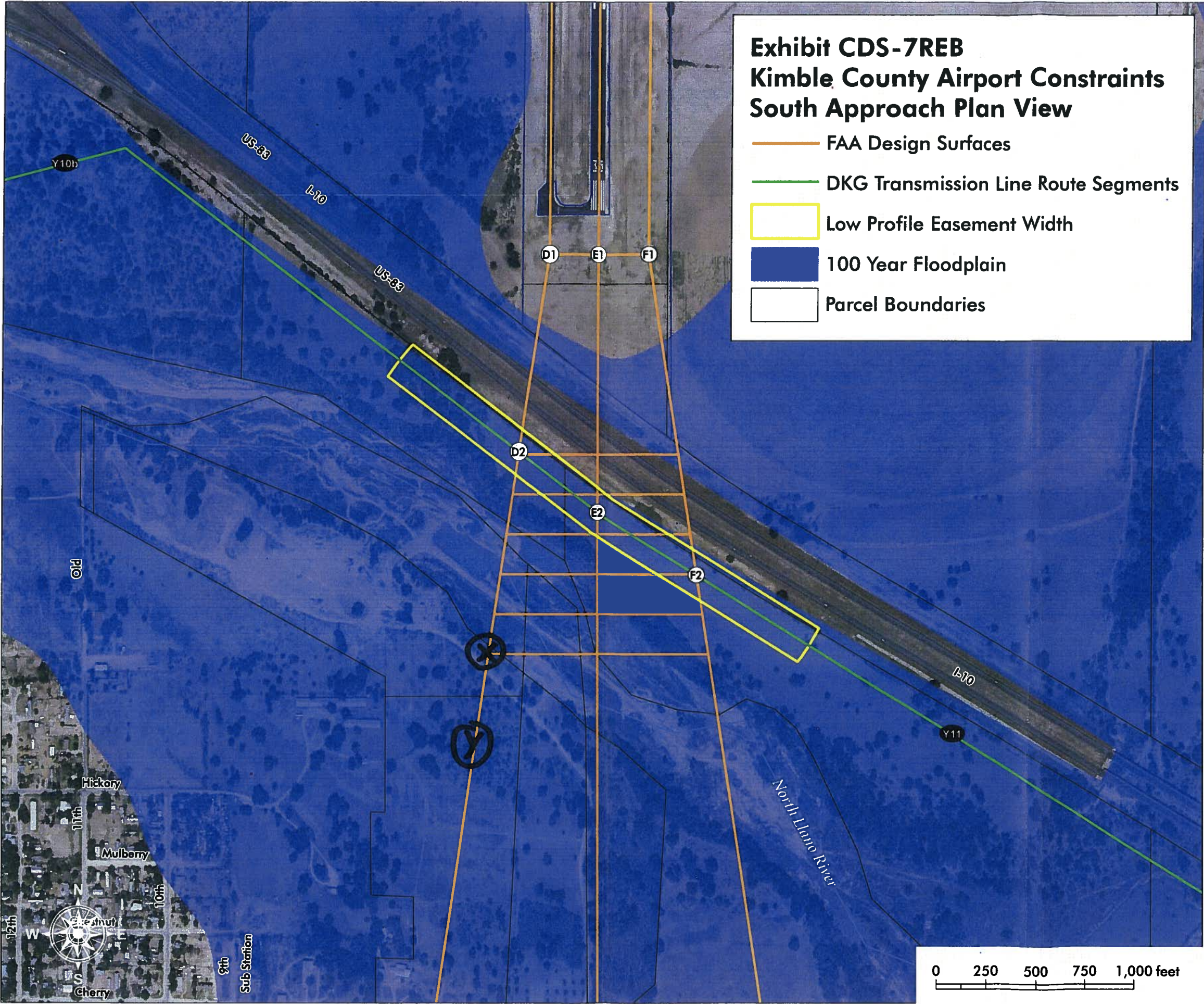
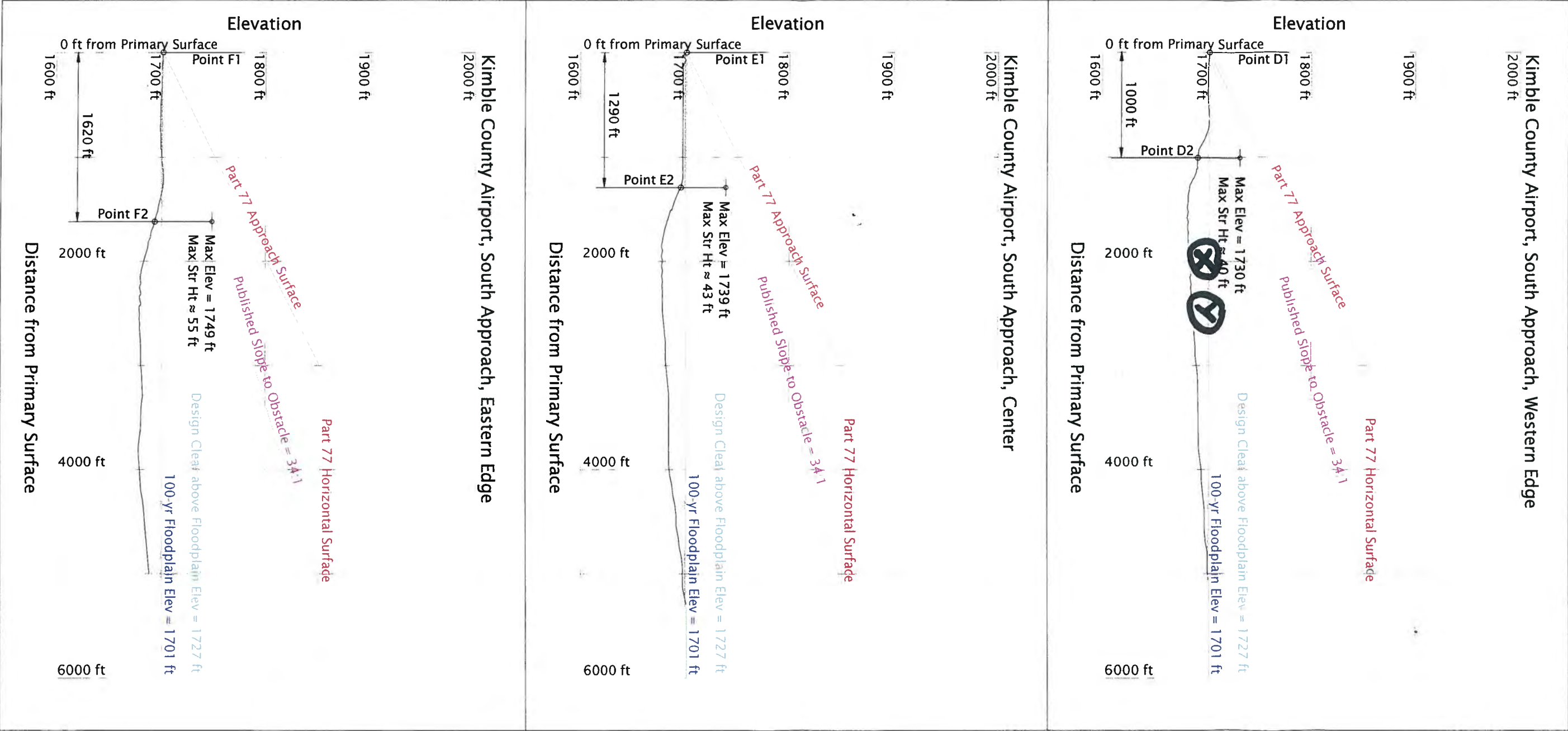


Exhibit CDS-8REB: Kimble County Airport Constraints - South Approach Profiles



STATE OFFICE OF ADMINISTRATIVE HEARINGS
Ch. 2003

§ 2003.049

(b) The utility division shall conduct hearings relating to contested cases before the commission, other than a hearing conducted by one or more commissioners. The commission by rule may delegate the responsibility to hear any other matter before the commission if consistent with the duties and responsibilities of the division.

(c) Only an administrative law judge in the utility division may conduct a hearing on behalf of the commission. An administrative law judge in the utility division may conduct hearings for other state agencies as time allows. The office may transfer an administrative law judge into the division on a temporary or permanent basis and may contract with qualified individuals to serve as temporary administrative law judges as necessary.

(d) To be eligible to preside at a hearing, an administrative law judge, regardless of temporary or permanent status, must be licensed to practice law in this state and have not less than five years of general experience or three years of experience in utility regulatory law.

(e) At the time the office receives jurisdiction of a proceeding, the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed.

(f) The office and the commission shall jointly adopt rules providing for certification to the commission of an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law. The rules must address, at a minimum, the issues that are appropriate for certification and the procedure to be used in certifying the issue. Each agency shall publish the jointly adopted rules.

(g) Notwithstanding Section 2001.058, the commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(h) The commission shall state in writing the specific reason and legal basis for its determination under Subsection (g).

(i) An administrative law judge, on the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, may impose appropriate sanctions as provided by Subsection (j) against a party or its representative for:

Sec. 37.056. GRANT OR DENIAL OF CERTIFICATE.

(a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

- (1) grant the certificate as requested;
- (2) 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
- (3) refuse to grant the certificate.

(c) The commission shall grant each certificate on a nondiscriminatory basis after considering:

- (1) the adequacy of existing service;
- (2) the need for additional service;
- (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
- (4) other factors, such as:

- (A) community values;
- (B) recreational and park areas;
- (C) historical and aesthetic values;
- (D) environmental integrity;
- (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
- (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

(V.A.C.S. Art. 1446c-0, Secs. 2.255(b), (c).) (Amended by Acts 2003, 78th Leg., R.S., ch. 295 (HB 2548), § 2.)

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§25.101(b) continued

- (2) **New generating unit.** A new electric generating unit constructed, owned, or operated by a bundled electric utility.
- (3) **New electric transmission line.** All new electric transmission lines shall be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports).
 - (A) **Need:** In determining the need for a proposed transmission line, the commission shall consider among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. The commission shall give great weight to:
 - (i) the recommendation of an organization that meets the requirements of PURA §39.151; and/or
 - (ii) written documentation that the proposed facility is needed for the purpose of interconnecting a new transmission service customer.
 - (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. The following factors shall be considered in the selection of the utility's preferred and alternate routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):
 - (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
 - (ii) whether the routes parallel existing compatible rights-of-way;
 - (iii) whether the routes parallel property lines or other natural or cultural features; and
 - (iv) whether the routes conform with the policy of prudent avoidance.
 - (C) **Uncontested transmission lines:** An application for a certificate for a transmission line shall be approved administratively within 80 days from the date of filing a complete application if:
 - (i) no motion to intervene has been filed or the application is uncontested; and
 - (ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.
 - (D) **Projects deemed critical to reliability.** Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system shall be considered by the commission on an expedited basis. The commission shall render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.
- (c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:
 - (1) A contiguous extension of those facilities described in PURA §37.052;
 - (2) A new electric high voltage switching station, or substation;

COMMUNITY VALUES CHART

Locations and Dates of Open House	Attendees' Preference for Maximizing Distance of Transmission Line From Residences	Attendees' Preference to Use or Parallel Other Existing Compatible ROW (e.g. pipelines, railroads, highways, existing transmission lines) where possible
San Angelo 2009	67% - Second Priority (EA p. 6-5)	71% - First Priority (EA p. 6-5)
Christoval 2009	73% - First Priority (EA p. 6-7)	52% - Fourth Priority (EA p. 6-8)
Junction 2009	73% - First Priority (EA p. 6-10)	65% - Fourth Priority (EA p. 6-10)
Harper 2009	76% - First Priority (EA p. 6-12)	57% - Fourth Priority (EA p. 6-12)
Comfort 2009	78% - Third Priority (EA p. 6-15)	81% - First Priority (EA p. 6-15)
Kerrville 2009	71% - Second Priority (EA p. 6-17)	74% - First Priority (EA p. 6-17)
Lampasas 2009	58% - Second Priority (EA p. 6-19)	59% - First Priority (EA p. 6-19)
Burnet 2009	55% - Fifth Priority (EA p. 6-21)	73% - Second Priority (EA p. 6-21)
Llano 2009	55% - Second Priority (EA p. 6-23)	47% - Sixth Priority (EA p. 6-24)
Fredericksburg 2009	67% - First Priority (EA p. 6-26)	62% - Third Priority (EA p. 6-26)
Comfort 2009	71% - Second Priority (EA p. 6-29)	68% - Fourth Priority (EA p. 6-29)
Questionnaires from People Not Attending an Open House 2009 (Twin Buttes to McCamey D to Kendall)	72% - First Priority (EA p. 6-32)	72% - Second Priority (EA p. 6-32)
Questionnaires from People Not Attending an Open House 2009 (Kendall to Gillespie to Newton)	70% - Second Priority (EA p. 6-34)	77% - First Priority (EA p. 6-34)
Junction 2010	69% - First Priority (EA p. 6-38)	64% - Third Priority (EA p. 6-38)
Menard 2010	73% - Second Priority (EA p. 6-41)	69% - Fourth Priority (EA p. 6-41)
Mason 2010	63% - Fifth Priority (EA p. 6-43)	67% - Second Priority (EA p. 6-43)
Fredericksburg 2010	77% - First Priority (EA p. 6-46)	71% - Third Priority (EA p. 6-46)
Eldorado 2010	58% - Fifth Priority (EA p. 6-49)	69% - Second Priority (EA p. 6-49)
Kerrville 2010	81% - First Priority (EA p. 6-52)	73% - Third Priority (EA p. 6-52)
Sonora 2010	71% - Fourth Priority (EA p. 6-54)	82% - Second Priority (EA p. 6-54)
Questionnaires from People Not Attending an Open House 2010	57% - Sixth Priority (EA p. 6-57)	62% - Fourth Priority (EA p. 6-57)

Red = corrected information on original Attachment G