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CORPORATION TO AMEND ITS	§	
CERTIFICATE OF	§	
CONVENIENCE AND	§	OF
NECESSITY FOR THE	§	
GILLESPIE TO NEWTON 345-KV	§	
CREZ TRANSMISSION LINE IN	§	
GILLESPIE, LLANO, SAN SABA,	§	
BURNET, AND LAMPASAS	§	ADMINISTRATIVE HEARINGS
COUNTIES, TEXAS		

THE LANDOWNERS PRESERVATION GROUP'S
REPLIES TO EXCEPTIONS TO THE PFD

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TABLE OF CONTENTS

I.	OVERVIEW.....	4
II.	ROUTE GN5 BEST BALANCES COMMUNITY VALUES.....	8
A.	MESQUITE CREEK COMMUNITY HARMED BY GN6.....	9
1.	Swapping links does not mitigate impact of line on Mesquite Creek Community	11
2.	Impact of Southern Route Endings on Particular Properties	14
3.	The C18, C26, C27 Juncture.....	17
B.	THE IMPACT OF THE 345 kV LINE WOULD NOT BE INCONSEQUENTIAL TO THE BUCHANAN DAM COMMUNITY.....	18
1.	All rights-of-way are not created equal	19
3.	Existing Right-of-Way on Link C14 of Route GN6 is, for much of the distance, very narrow	19
C.	USE OF MONOPOLES DOES NOT JUSTIFY BISECTING POPULATED COMMUNITIES	21
1.	Installing Monopoles Does Not Make GN6 or GN11 the Best Route.....	22
2.	Monopoles Should Also Be Installed on C27, and C28 and C30	24
3.	The Cost of Monopoles Must Be Factored Into Route Evaluation.....	25
4.	LCRA TSC's Exceptions on Monopoles Should Be Rejected	26
5.	Route GN5 Eliminates Monopole Issue	27
D.	C31 IS VIABLE AND ADVANTAGEOUS ROUTE ENDING SEGMENT.....	29

F. THE C22 COLORADO RIVER CROSSING IS NOT AN ISSUE BUT A DISTRACTION.....	30
1. Notice to Oakhurst Is Not an Issue	31
2. Crossing at C22 Can Be Done Without Going On Oakhurst Land	31
II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE	34
III. THE PARTICIPANTS	34
IV. PRELIMINARY ORDER ISSUES	35
B. PRELIMINARY ORDER ISSUE NO. 2: DID THE NOTICE PROVIDED BY LCRA TSC COMPLY WITH P.U.C. PROC. R. 22.52(A)?	35
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)?	35
2. Community Values	35
3. Recreational and Park Areas	42
4. Historical and Aesthetic Values	43
5. Environmental Integrity	44
7. Engineering Constraints	45
8. Costs	45
9. Utilizing Existing/Parallel ROW	46
10. Prudent Avoidance	47
V. CONCLUSION	47

ATTACHMENTS

Attachment A CJ Ranch Exhibit 2 at MM-3, maps of GCW habitat on C29, C30 and C31

Attachment B LCRA TSC's Exhibits 22 and 24, depicting C21 minor route deviation

Attachment C Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

**SOAH DOCKET NO. 473-10-1097
PUC DOCKET NO. 37448**

APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE GILLESPIE TO NEWTON 345-KV CREZ TRANSMISSION LINE IN GILLESPIE, LLANO, SAN SABA, BURNET, AND LAMPASAS COUNTIES, TEXAS	§ § § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**THE LANDOWNERS PRESERVATION GROUP'S
REPLIES TO EXCEPTIONS TO THE PFD**

TO THE HONORABLE PUBLIC UTILITY COMMISSION:

The Landowners Preservation Group (LPG) appreciates the opportunity to except to the Proposal for Decision (PFD) and respond to other intervenors, and would respectfully submit the following Replies to Exceptions to the PFD (Replies):

I. OVERVIEW

LPG agrees with Commission Staff's Exceptions that Route GN6 should be rejected due to the tremendous number of habitable structures within the prudent avoidance zone of 500 feet of the centerline,¹ especially in comparison to routes that cross the Colorado River on Link C22. The Staff's recommendation should be given great weight as it is the only party without an ax to grind in this proceeding. The Staff is to be commended for pointing out that all habitable structures within 500 feet of centerline of a 345 kV structure are newly affected. Staff and LPG are in synch with regard to the routing of the Gillespie to Newton Line – until it gets to the

¹ Commission Staff's Exceptions to the PFD at 7 (March 26, 2010).

ending segments. LPG does differ from Staff with regard to the ending links in Lampasas County.

Staff recommends that a route be adopted that goes through the Mesquite Creek Community, which is highly populated. There are many more habitable structures in the Mesquite Creek Community within the prudent avoidance zone than on Links C25 and C31, which approach Newton Station from the north. It is easy to see how Staff may have differed with LPG due to the fact that the Brown to Newton *Oncor* Line was expected to use Link QQQ. That link paralleled LCRA's Link C31 as it approached Newton Station. However, the Commission on Thursday, April 1st, decided to replace Route 140 with Route 137, so that the *Oncor* line will no longer use Link QQQ.²

The PFD indicates that the Commission must make a choice in this proceeding between two powerful routing criterion: using or paralleling more existing right-of-way versus minimizing the impact on habitable structures. Intervenor Point Peak Mountain Resort (Point Peak) argues extensively in its exceptions³ that putting the line near habitable structures in Buchanan Dam Communities should not be weighed heavily because, for much of the distance through the Buchanan Dam Communities, there is an existing 69 kV line.

Point Peak loses sight of the fact that the existing 69 kV is not in any respect like the 345 kV structures, both lattice towers and monopoles. Comparing the 69 kV line's wooden "H"-Frame with a 345 kV lattice tower or monopole is like comparing a six story building in height with one that is anywhere from thirteen to eighteen stories in height.

While there may be instances where a 345 kV line has been near a residential subdivision, there is no precedent for placing a 345 kV line along the main street of a business district of an incorporated or unincorporated municipality.⁴ This is exactly what is happening

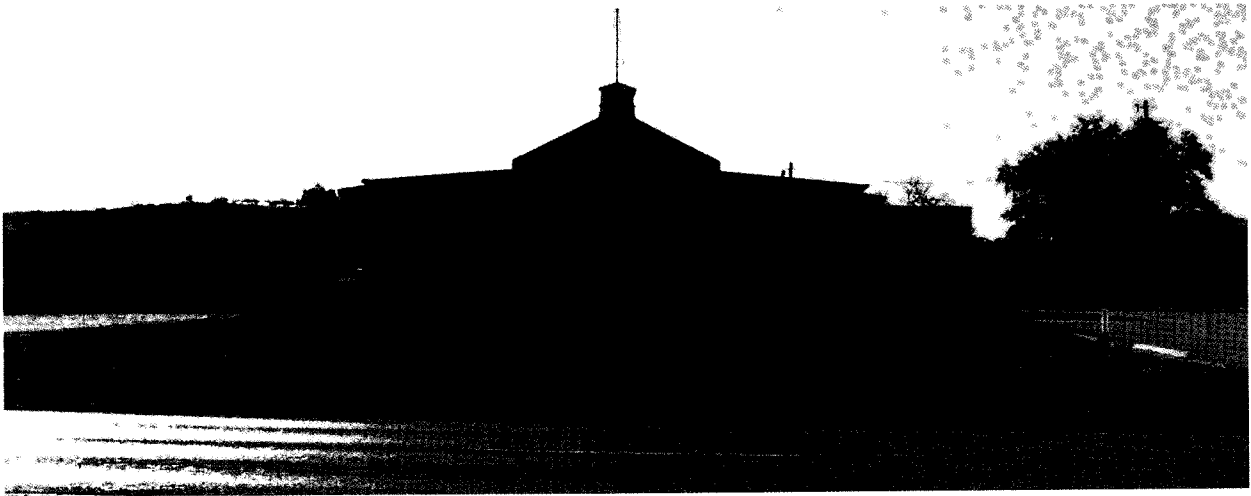
² The Commission orally issued an order adopted Route 137 in Docket No. 37464, *Application of Oncor Electric Delivery Company LLC to Amend its CCN for the Brown-to-Newton CREZ 345 kV Transmission Line in Brown, Mills, Lampasas, McCulloch and San Saba Counties*. A written order has not yet been issued.

³ Point Peak Exceptions at 2-5.

⁴ Tr. at 1932-34.

within the Buchanan Dam Community.⁵ Quite naturally when a 345 kV line goes back and forth across the main street it will put *businesses and residences in danger of being condemned*, as noted by the Administrative Law Judge.⁶ The intervenor exceptions of Mr. Payne and Point Peak fail to take this into account.

Those same intervenors fail to mention in their exceptions the fact that the 345 kV line is located across the street from the Genesis Lutheran Church. The Church is 140 feet from the centerline of Route GN6.⁷ The undersigned is not aware of any 345 kV line being that close to a church.



The above photograph is of the Genesis Lutheran Church located on East Highway 29, across the street from where the proposed 345-kV transmission line turns to cross the highway. This church is identified by LCRA TSC as Habitable Structure 129 and estimated to be 140 feet from the centerline of the proposed transmission line. See LPG Exhibit No. 29 at 24 (Attachment C to the Cross Rebuttal Testimony of Roger Michael Rannefeld).

⁵ Tr. at 1932.

⁶ PFD at 17.

⁷ LCRA Ex. 13, Exhibit RRR-4R, Structure No. 129 at page 17 of 31.

In his exceptions Mr. Payne also belittles the impact of a 345 kV line and its huge structures because there are already 69 kV lines that go through Inks Lake State Park to the Dam.⁸ Yet, what he fails to appreciate is the fact that the area surrounding Inks Lake is not flat. Thus, the 69 kV lines are not highly visible. On the other hand, the 345 kV line with its huge supporting structures would be highly visible. An example of this can be seen on the picture below taken from the Willows Subdivision facing west across Inks Lake. Two 345 kV towers were superimposed on this photograph.⁹



The above photograph was taken of Inks Lake where segment C17 of the proposed 345 kV line will cross the lake. Lattice towers that would reach to approximately 185 feet in height have been superimposed. If monopoles are installed, the structures may still reach to 175 feet, only 10 feet shorter than what is depicted in the photograph. See LPG Exhibit No. 28 at 14 (Attachment WJM-3 of Cross Rebuttal Testimony of William J. Maddux).

⁸ Initial Exceptions by Robert Payne at 32.

⁹ LPG Ex. 28, Attachment WJM-3

While Mr. Payne and Point Peak undervalue the negative impacts of the line on the Buchanan Dam community, they overvalue the existing right-of-way along Link C14, which is part of GN6. As will be discussed later in these Replies, the vast majority of the right-of-way for Link C14 is much narrower than 100 feet, which was the width *assumed* by LCRA TSC. The easement for 90% of the existing right-of-way on C14 is exceedingly narrow. In fact, a plat for Indian Hills Subdivision on the west side of the Buchanan Dam Community shows no transmission easement at all.¹⁰ While there are portions of Link C14 where the right-of-way is 100 feet in width, the vast majority of the right-of-way is far less. This means that the actual value of existing right-of-way is far less and the impact of the 140 feet of right-of-way for the 345 kV line is going to be far greater than what was assumed by Mr. Payne and Point Peak.

Not only did Mr. Payne and Point Peak far undervalue the damage the 345 kV line would do within the Buchanan Dam Community and overvalue the benefit of the existing right-of-way on Link C14, but they totally ignored the serious damage that Route GN6 or GN6b would do to the Mesquite Creek Community as discussed under Section II(B) below.

II. ROUTE GN5 BEST BALANCES COMMUNITY VALUES

Should the Commission adopt Route GN6, as recommended by the Proposal for Decision (PFD), the Commission would be setting several precedents for future CCN proceedings. These include:

- Routing a 345 kV line to crisscross the main commercial street of a city;
- Routing a 345 kV line within 140 feet of a church;
- Routing a 345 kV line within 500 feet of 164 habitable structures when there are alternative routes with less than 48 habitable structures impacted.

The LPG contends that it is not necessary to set these significant precedents that will result in less favorable transmission line routes in future CCN proceedings. As will be discussed below, Route GN6 is not the best route for the proposed line. It impacts too many properties, too

¹⁰ KDCB Garrett Ranch Ex. 6.

many habitable structures, too many businesses and too many recreational areas for a minimal gain of additional right-of-way (ROW) – the width of which is likely not more than *14.5 feet*.

The LPG respectfully requests Route GN5 be adopted as it best balances community values in the study area and the Commission's policies regarding using existing easements and prudent avoidance. In support thereof, LPG proposes revisions to the PFD's Findings of Fact, Conclusions of Law and Ordering Paragraph, which are included in Attachment C to these Replies.

A. Mesquite Creek Community Harmed by GN6

While the PFD accurately and appropriately recognizes the importance of Mesquite Creek as a recreational area for the community along C30,¹¹ it fails to recognize that the landowners along C28, C29 and C30 all belong to the same, populated community. For C29 and C30, the routing of the line is in fact a front yard versus backyard issue, either of which adversely impacts Mesquite Creek and the community surrounding it. Most importantly, however, the PFD does not consider how densely populated the community is.

In initial exceptions, intervenor Robert Payne even proposes removing this community from deliberations altogether, stating the Commission should only focus on the "heart" of the study area.¹² Mr. Payne instructed the members of the LPG, many of whom live in the Mesquite Creek Community, to inform the Commission whether they would like the line on C27, C28 and C30 *or* C27, C29 and C31a.¹³ Mr. Payne's proposition misconstrues the available routing options before the Commission: Route GN5 best mitigates the impact of the proposed line on landowners both at the "heart" of the study area and end of the line.

In its initial exceptions, Staff also does not recognize the significant harm routing the transmission line south of the City of Lampasas through the Mesquite Creek Community will cause. While the LPG appreciates the Staff's fight to keep the proposed line north of Lake

¹¹ PFD at 22-23.

¹² Initial Exceptions to PFD by Robert Payne at 2-3 (March 26, 2010).

¹³ *Id.*

Buchanan to prevent the community of Buchanan Dam from being devastated by the 345 kV line, Staff does not offer this same effort to protect the numerous subdivisions in the Mesquite Creek Community. Rather, Staff states in its exceptions that GN10M offers the best balance of community values and other Commission requirements when selecting a route for a transmission line.¹⁴ The LPG respectfully disagrees with Staff on this point, as routing through the Mesquite Creek Community, where there are no existing transmission lines¹⁵ and a habitable structure (namely residences) is impacted less than every quarter of a mile¹⁶ is inconsistent with Staff's position on selecting a route that best implements the Commission's policy of prudent avoidance, to the extent possible, as Staff contends in its initial exceptions.¹⁷

The impact of the proposed line on the Mesquite Creek Community, and options to best mitigating such impact, has not been afforded the consideration that it deserves. Nor has the adverse impact to landowners along C27, starting at the junction with C18 and C26 on the Moore Ranch, been given any consideration. Link C27 segment leads into the Mesquite Creek Community. Further, for many of the properties in the Mesquite Creek Community, the proposed line would be devastating.

¹⁴ Commission Staff's Exceptions at 7 (March 26, 2010).

¹⁵ LCRA TSC Exhibit No. 14 (transmission map); also see LCRA TSC Exhibit N0. 1 (Application) at Attachment 1 (EA), Vol. 2, Figure 6-1(c).

¹⁶ See Habitable Structure Chart on page 12, dividing length of line through Mesquite Creek Community by impacted habitable structures the line impacts a habitable structure every 0.20 miles. This calculation can also be done by link using information available in LCRA TSC Exhibit No. 13 (Rebuttal Testimony of Reid) at RRR-3R.

¹⁷ Commission Staff's Exceptions to the PFD at 7 (March 26, 2010).

1. **Swapping links does not mitigate impact of line on Mesquite Creek Community**

GN6 or GN11 would impact 47 residences and 93 tracts of land in the Mesquite Creek Community.

The Mesquite Creek Community includes segments C28, C29 and C30, all which either cross, abut or come in close proximity to Mesquite Creek. Because of the close proximity of the three links, the impact of the line on all three links must be considered.

The photograph below is an example of a creek-front home in this community. The home would be facing the proposed line on link C30, which would run on the opposite bank.



The above photograph is of Mesquite Creek in front of the home of Mr. and Mrs. Stephen King (Tract C30-020, HS 205). The photograph was taken from the bridge on CR 4390. Link C30 is proposed to be placed on the south bank of C30, opposite the King's house. See LPG Exhibit No. 4 (Direct Testimony of Jack Clark) at 7 and Attachment A.

Numerous homes in the Mesquite Creek Community will be impacted by routing the line on GN6, GN11 and GN10M. On links C29 and C30 alone, 30 and 14 habitable structures, respectively, would be within 500 feet of the line.¹⁸ Another 3 habitable structures would be impacted by C28, which is only 2770 feet, or a half-mile, in length.¹⁹

All of the habitable structures on C28, C29, and C30 are identified by LCRA TSC as residences.²⁰ Further, the community is comprised of numerous parcels that are smaller than the larger tracts on the northern segments.²¹ In other words, the landowners in the Mesquite Creek Community would be living with the line 24 hours / 7 days a week in a more confined space than available on routes north of Lake Buchanan and north of the City of Lampasas.

The proposed line would impact significantly more habitable structures over a shorter length of the line in the Mesquite Creek Community than along link C31.

HABITABLE STRUCTURES COMPARISON²²

	Habitable Structures	Length of Link (in miles) ²³
Mesquite Creek Community (C28, C29 and C30)	47	9.8
C31	5	16.9

¹⁸ LCRA TSC Exhibit No. 13 at RRR-3R (Rebuttal Testimony of Rob Reid).

¹⁹ *Id.*

²⁰ LCRA TSC Exhibit 1 (Application) at 219-220 (Table 6-3, Habitable structures on GN11), cross-referencing Attachment 5 (Revised Directly Affected Landowner List); Habitable Structures 166 through 219 are on links C27, C28 and C30 of GN11; according to Table 6-3 in the Application, all of these habitable structures are residences, either single-family or mobile homes. Also *see* LCRA TSC Exhibit No. 1 (Application) at 230 (Table 6-9, Habitable Structures on GN6), cross-referencing Attachment 5 (Revised Directly Affected Landowner List); Habitable Structures 166 through 219 are impacted by Links C27, C29 and C31a; according to Table 6-9, all of these habitable structures are residences, either single family or mobile homes.

²¹ LCRA TSC Exhibit No. 1 (Application) at Attachment 4 (Landowner maps), Sheets 1-4.

²² LCRA TSC Exhibit No. 13 (Rebuttal Testimony of Rob Reid) at Attachment RRR-3R; Mesquite Creek Community includes sum of links C28, C29 and C30.

²³ Miles are calculated by dividing feet by 5260.

Further, as the table illustrates, many more residences are impacted in closer proximity to one another through the Mesquite Creek Community. This is consistent with LCRA TSC witness Curtis Symank testimony at the hearing on the merits that segment C31 does not have subdivisions of the density as that along Mesquite Creek.²⁴

Changing the configuration of the segments between C29 and C31a or C28 and C30 does not mitigate the impact of the proposed line on this community. These segments are too close in proximity to one another: C29 and C30 are at most a half-mile apart, and at some places only 1700 feet apart.²⁵ Thus, the same landowners would be impacted regardless of whether the line was routed in C29 or C30. As previously stated, the choice between C29 and C30 is the choice for several landowners between routing the line in their front yard or back yard.

Similar to mitigating the line's impact on habitable structures, using C31 to approach Newton would also eliminate the impact of the proposed line on the recreational creek.²⁶ On the northern route terminus, the only similar discussion to that of Mesquite Creek would concern Lucy Creek and Little Lucy Creek, but there is no comparison. Segment C31 parallels Lucy Creek but at a far distance; C31 is 10,000 feet or more to the south of Lucy Creek.²⁷ Segment C31 also comes within 5000 feet of Little Lucy Creek for a short length and crosses the confluence of Little Lucy Creek and Lucy Creek;²⁸ however, the line does not crisscross the creeks several times as the line does on Mesquite Creek.²⁹ In fact, C30 parallels and crosses Mesquite Creek for 25,000 feet – *almost 5 miles!*³⁰ Moreover, no evidence in the record describes Lucy Creek to be a recreational center for intervenors on C31 and, as pointed out above, there are very few habitable structures adversely affected. Thus, the community along

²⁴ Tr. at 637.

²⁵ Tr. at 641.

²⁶ PFD at 22-23; also *see* LPG Exhibit No. 4 (Direct Testimony of Jack Clark) at 7 (Jan. 6, 2010).

²⁷ Tr. at 988.

²⁸ Tr. at 987-88.

²⁹ Tr. at 988.

³⁰ Tr. at 1193.

C31 would be less impacted than the Mesquite Creek Community.

2. Impact of Southern Route Endings on Particular Properties

Several Properties on C29 and C30 would be completely devastated by the proposed line.

The devastating impact of the proposed line on particular properties in the Mesquite Creek Community also warrants consideration. The Mesquite Creek Community is undisturbed land; as previously stated, no transmission lines exist in the area.³¹ Thus, in this densely populated community, the transmission line would not use or parallel any existing ROW.

The below discussion of the 1875 Rainwater Family House and the Harrells and the Clark properties identifies only a few of the properties in the Mesquite Creek Community that will be adversely impacted.

a. The 1875 Rainwater House

The 1875 Rainwater Family House (HS 255), located on Kaye Fischer-Hales property (Tract ID C30-014) lies either directly under or within 78 feet of the proposed C30 segment.³² The house has been in the Rainwater family for four generations.³³ According to LCRA TSC, the house may have to be moved.³⁴ Sitting at the top of a 40-foot ravine that drops down to Mesquite Creek and near two caves, however, the house cannot be moved.³⁵ Further, the land is completely natural and undisturbed, with 75% of the tract not traversed by foot.³⁶ In fact, the

³¹

³² From Mrs. Hales review of LCRA TSC's proposed line, she estimates that C30 is less than 25 feet from the Rainwater Family House; see LPG Exhibit No. 3 at 6. LCRA TSC estimates the line to be 78 feet from the house; see LCRA TSC Exhibit No. 13 at RRR-4R (see page 2, HS 255). Considering the exact location of the line is not known, either of these estimates could be correct.

³³ LPG Exhibit No. 3 at 5 (Jan. 6, 2010).

³⁴ Tr. at 1224.

³⁵ *Id.* at 6-7 and Attachment A (map of C30-014).

³⁶ *Id.* at 6.

1875 Rainwater house is covered by trees to such extent that LCRA TSC to use LIDAR to identify it as a habitable structure.³⁷ Not only would the use of segment C30 place the 1875 Rainwater house in the right-of-way of the 345 kV line, possibly directly under the line, the line and its structures would destroy the land that the Hales, and their ancestors, have preserved.

c. The Harrells

The impact of the line on the Harrell families is also significant. Proposed segment C29 would cut through Ed and Jacqueline Harrell's land between their house and the house of their son Jeffrey Harrell.³⁸ Link C29, although on the property of Ed and Jacqueline Harrell, impacts both generations, dividing the father and mother's home from that of their son's.

Mr. Ed Harrell is also a good example of the front yard / backyard issue when routing the line through the Mesquite Creek Community. For Mr. Harrell, using C30 instead of C29 does not mitigate the impact of the line on his property or the community, as C30 passes on one side of his house and C29 the other.³⁹ As previously stated, links C29 and C30 are so close in proximity that they must be considered together when determining the impact of a line on the community; using one or the other would still adversely impact the densely populated Mesquite Creek Community.

d. The Clark Properties

The Clark family properties provide additional examples of the impact of the proposed line, routed using either C29 or C30, on the undisturbed land in the Mesquite Creek Community. The proposed line would bisect their properties, not following the property lines or using or paralleling any existing right-of-way.⁴⁰ In fact the line, along C29 and C30, would come within 500 feet of 6 habitable structures⁴¹ and impact every piece of property that they own.⁴²

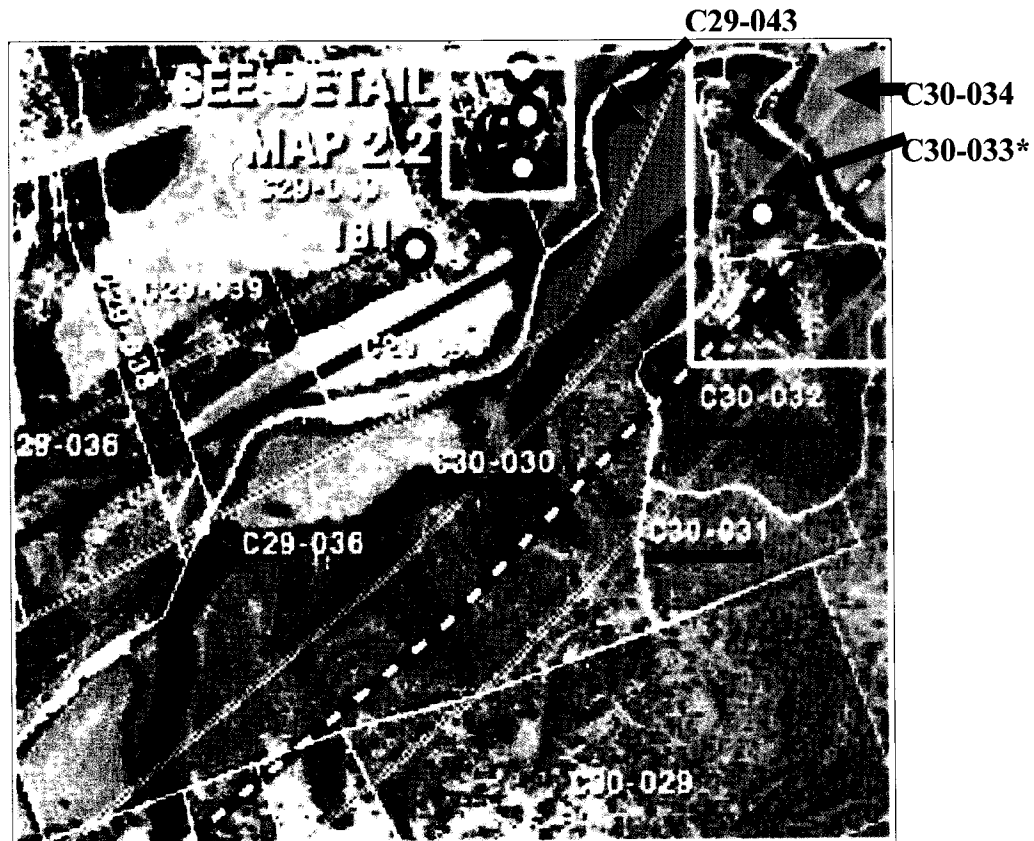
³⁷ LCRA TSC Exhibit No. 11 (Rebuttal Testimony of Curtis Symank) at 3.

³⁸ LCRA TSC Exhibit No. 15 (Intervenor Map) at Sheet No. 2.

³⁹ *Id.*

⁴⁰ LCRA TSC Exhibit No. 1 (Application) at Attachment 4 (landowner maps), Sheet No. 2; also *see* next page.

⁴¹ LCRA TSC Exhibit No. 1 (Application) at Attachment 5R (Revised Directly Affected Landowner List).



The above map is a section of Sheet No. 2 of LCRA TSC Attachment 4 (Landowner Maps). Link C30 of the preferred route (GN11) is the red line, while link C29 of alternate route GN6 is the dashed line.

The Clark properties are C29-043, C30-030, C30-031, C30-032, C30-033 and C30-034.

* Clark family homestead

Jack and Cynthia Clark own the above-referenced properties jointly as husband and wife and with their respective families through the Clark Family, LP and the Sanderford Ranch.⁴³ Tract C30-033 is Mr. and Mrs. Clark's homestead.⁴⁴ The proposed line would run through the Clark's backyard, coming as close as 200 feet from their backdoor and even closer to their

⁴² LPG Exhibit No. 4 (Direct Testimony of Jack Clark) at 9 (Jan. 6, 2010).

⁴³ *Id.* at 5.

⁴⁴ *Id.*

swimming pool.⁴⁵ Further, the line would also drop 50 to 80 feet to cut across the southern edge of their stock pond.⁴⁶ As can be seen by the map, several of the properties would be impacted regardless of whether the line was routed using C29 or C30 as the two segments are so close in proximity. By the Clark's properties, the 500-foot corridor of the two segments almost touch.

The Clarks' concerns regarding the routing of the line on either C29 or C30 illustrate the problem with using GN6, GN10M or GN11: there is no good route through the densely populated Mesquite Creek Community.

3. The C18, C26, C27 Juncture

Approaching the Mesquite Creek Community, GN6 and GN11 would destroy the Moore Ranch.

On C27, the proposed line would burden the Moore Ranch in a west-to-east direction through the upper-middle of the ranch for 2.5 miles.⁴⁷ This ranch is already burdened by a 138 kV line (T-109) in a south-to-north direction.⁴⁸ Thus, the ranch, which is located at the junction of C18, C26 and C27,⁴⁹ would be bisected by transmission lines running in two different directions as a result of the line being routed on GN6, GN11 or GN10M.

The impact to the Moore Ranch is more exacerbated by the use of GN6, as *three* sets of transmission lines would burden the ranch: two running in a north-south direction and one in an west-east direction. T-109 would be paralleled by link C18, which would connect with C27 to head east towards Newton.⁵⁰ Thus, using GN6, a total of *three different transmission lines*, one existing 138 kV (T-109) and two new 345 kV lines (C18 and C27) would cross the ranch.

⁴⁵ *Id.* at 9.

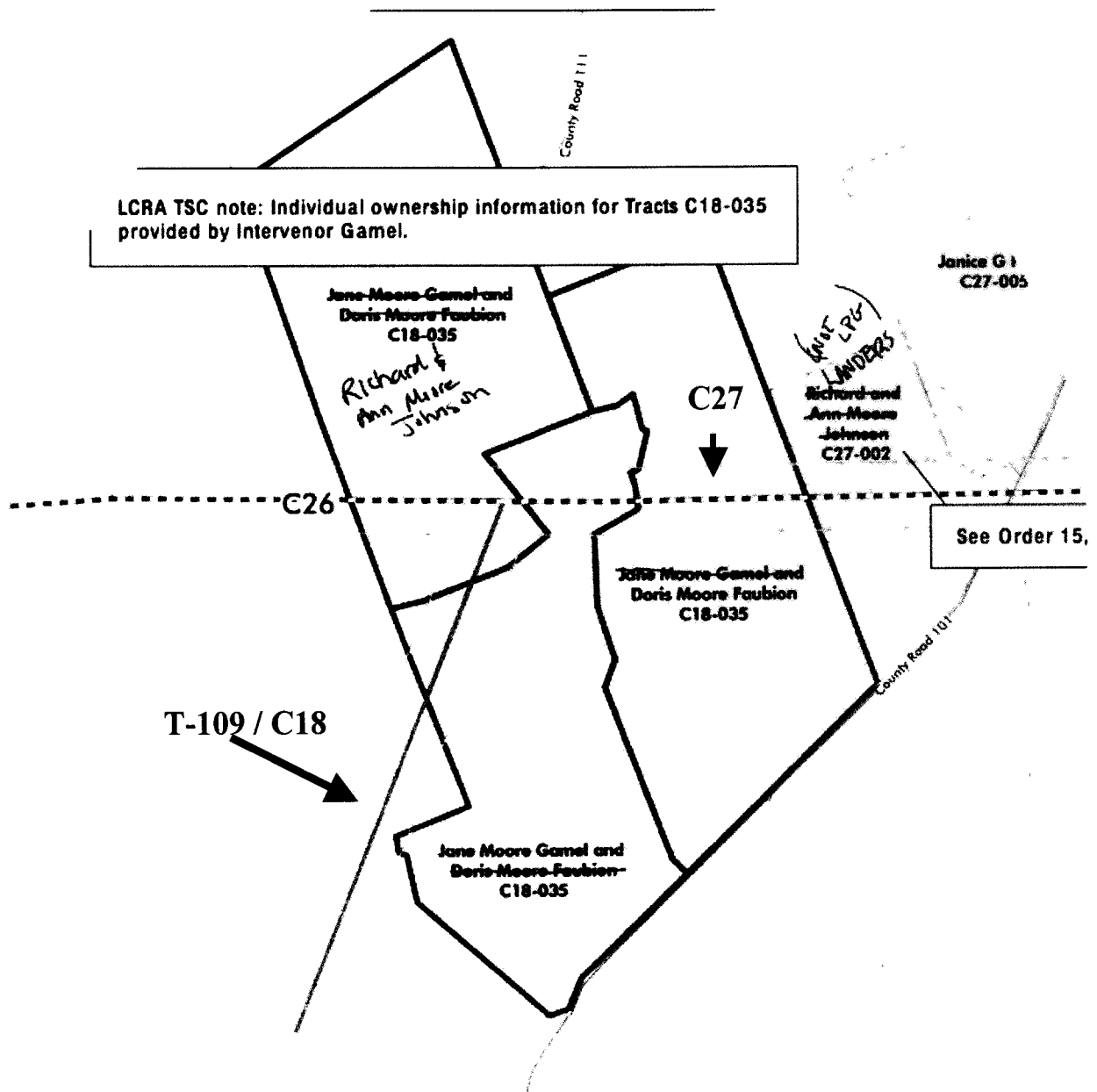
⁴⁶ *Id.*

⁴⁷ LPG Exhibit No. 2 (Direct Testimony of Jane Moore Gamel) at 6-7 (Jan. 6, 2010).

⁴⁸ *Id.*

⁴⁹ *Id.* at 7; also see LCRA TSC Exhibit No. 15 (Intervenor Maps) at Sheet No. 5.

⁵⁰ *Id.* at 7.



The Moore Ranch is at the junction of C18, C26 and C27. Link C18 would parallel the existing T-109, resulting in three transmission lines crossing the ranch along GN6.

As is evident by the above map,⁵¹ the Moore Ranch (Tract ID C18-035) would be devastated by routing the line along GN6, GN10M or GN11.

⁵¹ LCRA TSC Exhibit No. 15 (Intervenor Maps) at Sheet No. 5.

B. The Impact of the 345 kV Line Would Not be Inconsequential to the Buchanan Dam Community

The ROW advantages of GN6 are overstated.

The additional ROW used by Route GN6, in comparison to routes north of Lake Buchanan, does not provide the benefits typically associated with using existing right-of-way, such as reduced ROW acquisition work and expenses, less impact on habitable structures and less habitat fragmentation.

1. All rights-of-way are not created equal

In the Exceptions of Robert T. Payne he spends most of his time emphasizing the importance of utilizing existing right-of-way. He believes that the route that should be selected is the route that utilizes the highest percentage of existing right-of-way.⁵² Mr. Payne, like a couple of other large landowners, makes no attempt to examine the extent and features of the right-of-way. To them all right-of-way is the same. This is way too simplistic. For example, rights-of-way that are only a few feet in width are radically different then rights-of-way of 160 feet in width – in cost of ROW acquisition, in impact on the environment and in impact on habitable structures that may have to be condemned because of the increased width.

2. Existing Right-of-Way on Link C14 of Route GN6 is, for much of the distance, very narrow

Routes GN10M, GN11 and GN5 utilize approximately 34 miles of existing right-of-way. Route GN6 utilizes about 46 miles of existing right-of-way. The 12-mile difference is due to the existing right-of-way on Link C14 and a portion of Link C17. A total of 9.9 miles of that total is on Link C14.⁵³ Approximately 8 miles of Link C14 is on Chanas Ranch.⁵⁴ While LCRA TSC

⁵² Initial Exceptions by Robert Payne at 1-2.

⁵³ LPG Ex. 12, Attachment 1R at 8, feet were converted into miles.

assumed that the easement was 100 feet for cost estimating purposes, the actual easement is much, much smaller. As Mr. Richard McMillan, owner of Chanas Ranch, testified, the easement is only the width of the “H”-frame poles for the existing 69 kV line.⁵⁵ In connection with that testimony he attached his electric distribution/transmission line easement.⁵⁶

Without doubt Mr. Payne never looked at the McMillan easement. If he had done so he would notice that the easement provides for an easement “to be at or near the general course now located and staked out by the said grantee.” The line placed upon Mr. McMillan’s property, the 69 kV line, with a “H”-frame pole width up to 14.5 feet,⁵⁷ became the right-of-way. The rule of law is that “once the grantee has selected the easement location with the consent and/or acquiescence of the grantor, the grantee’s easement rights become fixed and certain.”⁵⁸

The *Dwyer* court interpreted an easement just like the McMillan easement, where there is nothing in the easement about the width of the easement, no metes and bounds description of the easement, nor any course or direction for the line to follow across the land. The McMillan easement is the total opposite of easements where the width is defined and/or there is a metes and bounds description. Mr. McMillan attached such easements to his testimony. Those were the easements on another LCRA TSC transmission line, T-109.⁵⁹

On the 8 miles of C14 located on Mr. McMillan’s property,⁶⁰ there is no indication that the width of the easement has been expanded beyond the width of the poles and certainly not to any size approaching 100 feet. In fact, the area under the line is overgrown with trees and shrubs and is not accessible to a motor vehicle.⁶¹ Similar to property where no existing easement exists

⁵⁴ Chanas Ranch, Initial Brief at 13.

⁵⁵ Chanas Ranch Exhibit No.1 (Cross Rebuttal Testimony of Richard McMillan) at 3, 10-13 (Jan. 22, 2010).

⁵⁶ Chanas Ranch Ex. 1, Exhibit RM-2 at 10-13.

⁵⁷ Tr. at 643.

⁵⁸ *Houston Pipe Line Company v. Dwyer*, 374 S.W.2d 662,666 (Tex. 1964).

⁵⁹ Chanas Ranch Ex. 1, Exhibit RM-3 at 14-24.

⁶⁰ Chanas Ranch Initial Brief at 13 (Feb. 15, 2010).

⁶¹ Chanas Ranch Ex. 1 at 4.

for the proposed line, these 8 miles on Chanas Ranch will need to be clear-cut,⁶² likely causing new habitat fragmentation.

Mr. McMillan's testimony regarding the limited width of the easement on his property has gone uncontested. *LCRA TSC filed rebuttal testimony after the cross-rebuttal testimony of Mr. McMillan was filed and did not in any way rebut the testimony of Mr. McMillan regarding the width of the easement.* In addition, neither LCRA TSC, nor any other party, cross-examined Mr. McMillan on this subject.⁶³

Mr. Payne, in his exceptions, also failed to observe that there was not a transmission line easement on the plat for the Indian Hills Subdivision, also on C14 in Buchanan Dam Community, that was admitted into evidence.⁶⁴ The plat is bordered to the south by State Highway 29. On the east and west of the subdivision plat are FM 1431 and Roselea Drive, respectively, both running in a north-south direction. The plat is dated May 13, 1966. The transmission line, T-267, which traverses the Indian Hills Subdivision was energized in 1941.⁶⁵ The most logical explanation for the lack of a transmission line right-of-way on the plat is the result of not having an easement of any specified width.

The inferior quality and width of the existing right-of-way along Link C14 does not provide a basis for overcoming the many flaws of Route GN6, both within Buchanan Dam and on the ending segments of Route GN6 where there is no existing right-of-way.

C. Use of Monopoles Does Not Justify Bisecting Populated Communities

In recommending Route GN6, the PFD recommends that monopoles be used on C3, C17, C29 and anywhere the proposed line comes within 200 feet of a habitable structure.⁶⁶ The use of monopoles on these segments does not make route GN6, GN10M or GN11 into a route which

⁶² *Id.*

⁶³ Tr. at 1252-1264.

⁶⁴ KDCB Garrett Ranch Ex. 6.

⁶⁵ Tr. at 536.

⁶⁶ PDF at 1.

should be adopted by the Commission..

In initial exceptions, LCRA TSC states that the 200-foot corridor for using monopoles should be reduced to 100 feet and a time limit should be imposed, such as the Application's date of filing (October 28, 2009).⁶⁷ Staff also excepts to the PFD on its monopole recommendation. Staff accurately points out that the installation of monopoles changes the cost of the route, which should be included the evaluation of whether Route GN6 is the best route for constructing the line.⁶⁸ Further, Staff recommends that if monopoles are to be installed in certain areas, then they should be installed on C14 for the same reasons that the ALJ recommended their use on C17.⁶⁹

The LPG contends that routing the line on GN5 eliminates issues discussed by LCRA TSC regarding the installation of monopoles. However, should GN6, GN10M or GN11 be approved for routing the Gillespie-Newton Line, despite their significant negative impact to the communities of Buchanan Dam and Mesquite Creek, the PFD's recommendation should be modified to include the use of monopoles on C27, and C28 and C30 should these segments be used in place of C29 and C31a. Further, LCRA TSC's exceptions concerning monopoles should be rejected.

1. Installing Monopoles Does Not Make GN6 or GN11 the Best Route

Monopoles would tower over homes and businesses in populated communities on GN6 and GN11.

In its initial exceptions, LCRA TSC commented that the PFD may have overstated the positive effects attributed to using monopoles.⁷⁰ For several reasons, the LPG agrees with LCRA TSC's statement.

⁶⁷ LCRA TSC Exceptions to the PFD at 3-4 (March 26, 2010).

⁶⁸ Commission Staff's Exceptions to the PDF at 16 (March 26, 2010).

⁶⁹ *Id.*

⁷⁰ LCRA TSC's Exceptions to the PFD at 5 (March 26, 2010).

The monopoles may mitigate some impact of the lines; however, in the Buchanan Dam Community and Mesquite Creek Community, the 345 kV line would still tower over the numerous homes in these densely populated areas, destroying property values. Monopole structures may range up to 175 feet in height⁷¹ with a diameter up to 10 feet.⁷² The existing “H”-frame structures in the Buchanan Dam Community are, 60 feet tall.⁷³ Thus, the monopoles would dwarf the existing 69 kV structures, impacting the aesthetics of Buchanan Dam, which is not only home to many people but is also a popular vacation area.

Moreover, in the Mesquite Creek Community, no existing transmission lines exist.⁷⁴ The monopole structures, although potentially shorter and less intrusive than LCRA TSC’s proposed lattice structures, would still scar this undisturbed land.

Further, the evidence does not suggest that the use of monopoles would prevent residences and business in the Buchanan Dam Community from being condemned. Conversely, *LCRA TSC clarified in its initial exceptions that monopoles will require the same amount of ROW as lattice structures.*⁷⁵ Thus, while monopoles would be the lesser of evils, their installation does not rectify the inherent flaws of using GN6 or GN11 that bisect some of the most densely populated communities in the study area.

⁷¹ LCRA TSC’s Exhibit No. 1 (Application) at 67 (EA at 1-15).

⁷² Tr. at 428.

⁷³ Tr. at 388, 642-43.

⁷⁴ LCRA TSC Exhibit No. 1 (Application), Attachment 1 (EA), Vol. 2, Figure 6-1(c); also see LCRA TSC Exhibit No. 14 (transmission map).

⁷⁵ LCRA TSC Initial Exceptions to the PFD at 5 (March 26, 2010).

2. Monopoles Should Also Be Installed on C27, and C28 and C30

Monopoles should be installed on C27, C28 and C30 for the same reasons as warranted for C29.

In its initial exceptions, Staff stated that if the Commission orders monopoles to be installed on C17, monopoles should also be installed on C14 for all the same reasons.⁷⁶ Similarly, other links in the Mesquite Creek Community warrant the same consideration.

If the Commission decides to take the lesser of evils approach, rather than routing through less populated areas, the LPG contends that monopoles must also be installed on link C27. Further, if the Commission decides to adopt GN11, GN10M, or to modify GN6's ending segments, monopoles also should be installed on links C28 and C30 for all the same reasons as they are warranted on C29.

Link C27 starts at the junction of C18 and C26, which is completely on the Moore Ranch.⁷⁷ As previously stated, C27 would bisect the Moore Ranch in a west-east direction, running through the upper-middle section of the ranch for 2.5 miles. Moreover, C27 would be bisecting the ranch in the opposite direction of the existing T-109, a 138 kV line⁷⁸ strung on monopoles.⁷⁹ Link C27 would also come within 800 feet of the ranch house and in close proximity to a barn and the graves of two children on the Moore Ranch.⁸⁰ To mitigate the impact of the proposed line, monopoles should be used on the Moore Ranch, and all of C27 that quickly approaches the Mesquite Creek Community.

In addition, after Link C27 leaves the Moore Ranch it goes on to cross US Highway 281

⁷⁶ Commission Staff's Exceptions to the PFD at 16 (March 26, 2010).

⁷⁷ LPG Exhibit No. 2 (Direct Testimony of Jane Moore Gamel) at 13 (Attachment A).

⁷⁸ Tr. at 220-221.

⁷⁹ Tr. at 449.

⁸⁰ LPG Exhibit No. 2 (Direct Testimony of Jane Moore Gamel) at 6.

as it approaches Lampasas from the City of Burnet and then goes on to cross US Highway 183 as that highway comes from the Austin metropolitan area. The land along US Highway 281 and US Highway 183, which C27 crosses just outside the ETJ for the City of Lampasas. The lattice towers would be very unsightly for visitors to the City and for future development along those two major arteries.

The PFD also does not address whether monopoles would be installed on C28 (or C28A) or C30 should these segments be used in the place of C29 and C31a. The LPG contends that should the proposed line be routed through the Mesquite Creek Community, regardless of the segments used, monopole structures should be installed.

Again, using these structures may mitigate the adverse impact of the line on the Moore Ranch, C27 and the Mesquite Creek Community, but the impact would still be significant and would best be avoided.

3. The Cost of Monopoles Must Be Factored Into Route Evaluation

Without considering the cost of using monopoles, the cost data is inaccurate and meaningless.

As Staff pointed out in its initial exceptions, if monopoles are to be used on certain routes to help mitigate those routes' impact on populated areas, the cost of the monopoles and their installation must be factored into the overall evaluation of the cost of the routes.⁸¹ The LPG agrees with Staff. Just as LCRA TSC must factor in the cost of the structures that they propose into the cost of the various routes, when these structures are changed, the cost of the routes must be updated – *particularly considering the fact that the information to update the cost is in evidence*. Otherwise, the Commission would be comparing routes using cost data that is knowingly inaccurate.

In its initial exceptions, Staff estimated the cost of installing monopoles on links C3, C14,

⁸¹ Commission Staff's Exceptions to the PFD at 16 (March 26, 2010).

C17, C29 and where the proposed line came within 200 feet of a habitable structure would amount to between \$1.4 and \$4.5 million.⁸² This same type of calculation can and should be used for all segments on which monopoles will be used. The LPG contends that this would also include segments C27, C28 and C30, for all the same reasons that monopoles are warranted for C29.

As a result, the cost of routing the line along GN6, GN11, or GN10M,⁸³ as recommended by Staff, is increased by several million dollars,⁸⁴ making these routes no longer as attractive from a cost perspective. In fact, because of the unaccounted for additional cost of monopoles and discrepancies with LCRA TSC's ROW cost data, further discussed under Section IV(F)(8) in these Replies, cost should not be used as a basis for selecting one route over another.

4. LCRA TSC's Exceptions on Monopoles Should Be Rejected

A 200-foot monopole corridor should be maintained; habitable structures under construction on October 28 should be considered.

LCRA TSC requests the Commission to modify the PFD's recommendation regarding monopoles, limiting their use to anywhere the line comes within 100 feet of a habitable structure that was in existence on the date the Application was filed, or October 28, 2010.⁸⁵ The LPG contends that the 200-foot corridor should be maintained and that if a date limit for the structures is to be included, it should permit any structure in the process of being constructed at the time of LCRA TSC's filing to be considered.

Along link C14 in the Buchanan Dam Community, 40 habitable structures are at or

⁸² *Id.* at 36.

⁸³ The Staff recommended GN10M uses the same ending segments as GN11: C27, C28 and C30.

⁸⁴ Staff's calculations would also apply to its recommended route, GN10M, for the route ending segments C27, C28 and C30.

⁸⁵ LCRA TSC's Exceptions to the PFD at 3-4 (March 26, 2010).

within 200 feet of the proposed line.⁸⁶ This number drops to 22 when the monopole corridor is reduced to 100 feet.⁸⁷ However, 22 habitable structures is not an insignificant number; further, these 22 habitable structures that would be removed from consideration are still part of a highly populated community that would be more adversely impacted by the size and location of the lattice structures. Being a mere 100 feet further from the proposed line does not sufficiently remove these habitable structures from the impact of the 345 kV line.

Further, a habitable structure should not need to be completed at the time of LCRA TSC's Application was filed to be considered. Rather, habitable structures *under construction* at the time LCRA TSC's Application was filed should be in contention for monopole structures. These habitable structures may easily have been underway at the time that notice of open houses was provided to the public in May 2009. Further, discussion of an upcoming project should not be considered adequate notice to prevent a person from commencing construction on a structure that may not ultimately be on a route proposed in a CCN application.

5. Route GN5 Eliminates Monopole Issue

Adopting Route GN5 avoids two densely populated communities where monopoles are warranted.

The LPG contends that rather than take the lesser of evils approach to routing the line by requiring monopoles to be installed on GN6, GN11, or GN10M, as is being recommended by Staff, the Commission should instead adopt Route GN5. Adopting Route GN5 would eliminate the need for monopoles on all sections other than C3. Thus, instead of attempting to "mitigate" the inherent flaws of routes GN6 and GN11 and GN10M, such as their adverse impact on multiple densely populated communities, a route without such defects would be adopted – Route

⁸⁶ See LCRA TSC Exhibit 1 at 231-233, cross-referenced to LCRA TSC Exhibit 1 at Attachment 5R and Attachment 1, Vol. 2, Figure 6-1c; HS's 48-156 are in the Buchanan Dam Community.

⁸⁷ *Id.*

GN5.

As the LPG stated in its initial exceptions, Route GN5 uses the same initial 6 segments used by GN6,⁸⁸ and same initial 9 segments used by GN10, GN10M and GN11.⁸⁹ However, instead of veering south of Lake Buchanan, as does GN6, and south of the City of Lampasas, as does GN10, GN10M and GN11, Route GN5 avoids the congestion of the Buchanan Dam Community and the Mesquite Creek Community and takes links C25, C31 and C31a into Newton Station.⁹⁰

Route GN5 approaches the Newton Station along the more rural and less populated segments north of the City of Lampasas. Further, unlike the Mesquite Creek Community, segment C31 on Route GN5, is not only less populated, impacting a habitable structure only every 3.38 miles⁹¹ versus every 0.14⁹² or 0.35⁹³ miles as does C29 and C30, respectively; but also, segment C31 has already been clear-cut.⁹⁴

Thus, by going north of Lake Buchanan and approaching the Newton Station along C31, much of the need for monopoles is eliminated, and instead, a 16.9 mile segment that has already been mostly clear-cut is used. Such practice also better conforms to the Commission's policy of prudent avoidance and better adheres to the community value of maximizing the distance of the line from residences and other habitable structures.

⁸⁸ Initial Exceptions of the LPG at 3 (March 26, 2010).

⁸⁹ LCRA TSC Exhibit No. 1 (Application) at 491 (Attachment 6, Description of Proposed Alternate Routes).

⁹⁰ *Id.*

⁹¹ LCRA TSC Exhibit No. 13 at RRR-3R; using 5260 feet per mile divide C31's length (16.9 miles) by its habitable structures (5).

⁹² LCRA TSC Exhibit No. 13 at RRR-3R; using 5260 feet per mile divide C29's length (4.3 miles) by its habitable structures (30).

⁹³ LCRA TSC Exhibit No. 13 at RRR-3R; using 5260 feet per mile divide C30's length (4.9 miles) by its habitable structures (14).

⁹⁴ Tr. at 1545.

D. C31 is Viable and Advantageous Route Ending Segment

GN5 will not parallel the adopted Oncor CREZ line to cause system planning or reliability issues.

In the PFD, the ALJ states that the use of C31 “could create a system planning and reliability problem.”⁹⁵ This is based on the PFD in an Oncor CREZ line proceeding, Docket No. 37464, recommending the use of Route 140.⁹⁶ Oncor Route 140 would have used link QQQ that would have paralleled C31 for approximately two miles.⁹⁷ This is apparent on the ALJ Exhibit No. 1, a map of the proposed LCRA TSC routes overlayed with the proposed Oncor routes.

However, this concern is not longer relevant as on April 1, 2010, the Commission approved Route 137 in Docket No. 37464. Oncor Route 137, using links UU2 to J to KKK1 and avoiding QQQ, does not parallel link C31 or any other segment on LCRA TSC Route GN5. Thus, Route GN5 should not be considered to be an issue from a system planning or reliability perspective.

In fact, Route GN5’s ending segments are advantageous. It is in this regard (i.e., the route ending segments) that LPG respectfully disagrees with Staff who states in initial exceptions that GN10M sufficiently avoids the habitat of endangered species or adequately reduces the number of habitable structures impacted by the line to best meet the totality of requirements the Commission must consider when selecting a route.⁹⁸ First, it is less likely that endangered species are along link C31. C31 has already been clear-cut⁹⁹ and considerable floodplain exists

⁹⁵ PFD at 7.

⁹⁶ *Id.* at 6.

⁹⁷ Although the PFD, relying on LCRA TSC’s Reply Brief, references Oncor Link UU2 as the link that would parallel LCRA TSC C31, this was an inadvertent error on the part of LCRA TSC that was carried over into the PFD by the ALJ. By looking at the ALJ Exhibit 1, it is quite apparent that Oncor Link QQQ is the segment that would parallel C31 and potentially cause reliability and system planning issues.

⁹⁸ Commission Staff’s Initial Exceptions at 6-7 (March 26, 2010).

⁹⁹ Tr. at 1545.

along link C31.¹⁰⁰ As intervenor Yancey Creek's expert witness Thomas Van Zandt testified at the hearing on the merits, endangered species – particularly the black-capped vireo (BCV) and golden-cheeked warbler (GCW) – are not likely to exist in a floodplain as a general rule.¹⁰¹ Moreover, maps provided by the expert witness of intervenor CJ Ranch, et. al, Michael Morrison, show considerable less potential GCW habitat along C31 than along C29 and C30 in the Mesquite Creek Community.¹⁰² See Attachment A to these Replies.

Second, unlike in the Mesquite Creek Community that is affected by routes GN6, GN11 and GN10M, C31 does not have as many densely populated subdivisions. The entire 16.9 miles of C31 only comes within 500 feet of 5 habitable structures. Thus, C31 impacts six times fewer habitable structures as the ALJ's recommended route ending segment C29 and impacts almost three times fewer habitable structures as link C30 of Staff and LCRA TSC proposed routes GN11 and GN10M.

F. The C22 Colorado River Crossing Is Not An Issue But a Distraction

Falling prey to the C22 notice distraction would result in a route adequacy issue.

Proponents of routing the proposed transmission line south of Lake Buchanan are doing their best to distract the Commission from considering any route that crosses the Colorado River along link C22.¹⁰³ Five routes cross the Colorado River at link C22.¹⁰⁴ Thus, eliminating this crossing, as several intervenors have requested in their initial exceptions,¹⁰⁵ not only reduces the

¹⁰⁰ Tr. at 1546-47.

¹⁰¹ *Id.*

¹⁰² CJ Ranch, et. al, Exhibit No. 2 (Direct Testimony of Michael Morrison) at 33 and 34 (Attachments MM-3).

¹⁰³ Limited Exceptions of CJ Ranch, et. al to the PFD at 2-3 (March 26, 2010); also see Limited Exceptions of KDCB Garrett Ranch to the PFD at 1, and Point Peak, et. al's Exceptions to the PFD at 6 (March 26, 2010).

¹⁰⁴ LCRA TSC Exhibit No. 1 (Application) at 491 (Attachment 6, Description of Proposed Alternate Routes).

¹⁰⁵ Limited Exceptions of CJ Ranch, et. al to the PFD at 2-3 (March 26, 2010); also see Limited Exceptions of KDCB Garrett Ranch to the PFD at 1, and Point Peak, et. al's Exceptions to the PFD at 6 (March 26, 2010)..

number of routes available for consideration from LCRA TSC's proposed 11 alternates to six, it essentially only gives the Commission the option of crossing the Colorado River at Inks Lake, along C17 south of Buchanan Dam.¹⁰⁶

The proposed line will be approximately 85 miles in length,¹⁰⁷ connecting the Gillespie Substation to the future Newton Station. The LPG questions whether six alternate routes would constitute an adequate number of routes for the Commission to consider for a route of such length. However, as discussed below, the Commission does not have to eliminate any routes from consideration to face such a question.

1. Notice to Oakhurst Is Not an Issue

Despite intervenors comments in their exceptions,¹⁰⁸ the LPG contends that link C22 is not an issue that warrants the elimination of five alternate routes. The Commission have both denied Oakhurst's request for abatement and plea to the jurisdiction¹⁰⁹ and KDCB Garrett Ranch's request for dismissal based on lack of notice to Oakhurst has been denied.¹¹⁰

At this point, further argument from intervenors is merely a distraction created to keep the proposed line off of their properties north of Lake Buchanan. The LPG commends the ALJ for not falling prey to this distraction.

2. Crossing at C22 Can Be Done Without Going On Oakhurst Land

At the hearing on the merits, Mr. Rob Reid, the primary LCRA routing witness, was asked if C22 could not be used because of the notice issue with Oakhurst would that change his

¹⁰⁶ Crossing the Colorado River along C20 has essentially been eliminated from consideration due to its proximity to the Colorado Bend State Park and the Post Oak Falls, leaving only two links to cross the Colorado River: C22 and C17 (at Inks Lake).

¹⁰⁷ LCRA TSC Exhibit No. 1 (Application) at 8; the length of the 11 routes range from 78.63 to 92.92 miles in length.

¹⁰⁸ Limited Exceptions of CJ Ranch, et. al to the PFD at 2-3 (March 26, 2010); also *see* Limited Exceptions of KDCB Garrett Ranch to the PFD at 1, and Point Peak, et. al's Exceptions to the PFD at 6 (March 26, 2010).

¹⁰⁹ The Commissioners orally denied the Appeal of Order No. 17 requesting an abatement of the proceedings. (April 1, 2010). The written order has not yet been filed.

¹¹⁰ Order Denying Appeal of Order No. 11 (February 12, 2010).

opinion with regard to supporting the preferred route, GN11, which crosses the Colorado River at C22.

Reid: No. In fact, I've looked at a minor route adjustment on that. On noticed landowners there's a very easy way to get around that situation if by chance that becomes not available.¹¹¹

LCRA TSC Exhibits 22 and 24¹¹² show a minor route deviation on the land of properly noticed landowners, Barnes Keith Ranch and KDCB Garret Ranch.¹¹³ The minor route deviation does not touch the land owned by Oakhurst Properties. *There is also no dispute that the minor route modification is only on the land of properly noticed landowners.* The minor route modification is shorter and would require less clearing of vegetation than the original C22 alignment.¹¹⁴ Mr. Reid was asked whether he had seen this sort of minor route modification in other proceedings.

Q. Mr. Reid have you seen or examined similar types of routing adjustments in the course of hearings at PUC proceedings?

A. Yes, many times.¹¹⁵

There is nothing extraordinary about the Commission adopting this minor route modification, even though it was not proposed by a landowner. This proposed deviation is no different than the proposed modification to C28 (C28A) that was proposed by LCRA TSC in rebuttal testimony.¹¹⁶ Similar to the modified C22 link, C28A would pass over noticed landowners properties who have not consented to the deviation. Despite the lack of the

¹¹¹ Tr. at 1956-57.

¹¹² Tr. at 1989.

¹¹³ Tr. at 1991-92.

¹¹⁴ Tr. at 1992.

¹¹⁵ *Id.*

¹¹⁶ LCRA TSC Exhibit No. 11 (Rebuttal Testimony of Curtis Symank) at 29 (Jan. 26, 2010).

landowners' consent, the ALJ recommended C28A if the Commission opted to route the line using C30 instead of C29.¹¹⁷ Other intervenors, including those opposing the modified C22, supported the use of C28A during the hearing on the merits because it reduced by 3 the number of habitable structures GN6 would impact.¹¹⁸ Moreover, these intervenors did not except to the use of C28A, as proposed by the ALJ in the PDF.

Even post-hearing, LCRA TSC may make minor route modifications – without the consent of the landowner. LCRA TSC will adjust alignments as it identifies obstacles and constraints along the approved route.¹¹⁹ LCRA has not yet been the property of landowners who are on the route ultimately adopted by the Commission. In addition, if LCRA TSC discovers artifacts or cultural resources during project construction not previously assessed, it may be necessary to adjust alignments to go around such sites.¹²⁰

By the same token, the Public Utility Commission and the Railroad Commission may order minor route modifications (“take appropriate action”) with regard to previously unidentified oil and gas wells.¹²¹ Further, LCRA TSC is in consultation with the U.S. Fish & Wildlife Service and may have to make a route adjustment to minimize or avoid endangered species habitat.¹²²

As LCRA TSC Exhibits 22 and 24 make clear, the proposed minor route adjustment to C22 is an improvement over the original C22 crossing of the Colorado River. *See* Attachment B to these Replies. It is shorter and involves clearing less right-of-way.¹²³ The general

¹¹⁷ PFD at 37.

¹¹⁸ Tr. at 728 (St. Clair for intervenor Yancey Creek), Tr. at 899-902 (Payne, pro se); 1271-1271 (Galant for intervenor Yancey Creek); Tr. at 1552 (St. Clair for intervenor Yancey Creek); and most importantly, Tr. at 1745-46 (Crump for intervenor KDCB Garrett Ranch).

¹¹⁹ LCRA TSC Ex. 1, Application, Question 18 at 24.

¹²⁰ LCRA TSC Ex. 1, Application, Question 18 at 24.

¹²¹ Ordering Paragraph #8, Order, *Application Oncor Electric Delivery Company, L.L.C., To Amend its Certificate of Convenience and necessity for the Riley-Bowman 345 kV CREZ Transmission Line (Formerly Oklaunion-Bowman Line) within Archer, Wichita, and Wilbarger Counties, Texas*, Docket No. 37408 (March 11, 2010).

¹²² Tr. at 889.

¹²³ Tr. at 1992.

development of such an adjustment was discussed during the hearing.¹²⁴ Without a doubt this crossing is much more preferable than crossing at Inks Lake, which is highly populated.¹²⁵

II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

As the LPG stated in its Initial Exceptions, the FOFs should reflect that LCRA TSC published noticed, as well as list all of the newspapers in which notice was published. *See* FOF No. 11 in Attachment C.

Changes proposed in initial exceptions by Point Peak, et. al, which would result in the order not finding that LCRA TSC complied with notice requirements, should not be adopted.¹²⁶ The ALJ correctly stated that all landowners received written notice.

III. THE PARTICIPANTS

The current members of the LPG who have actively participated in this proceeding own land on links C17, C18, C19, C26, C27, C28, C29 and C30. These members were listed by name and link in LPG's Initial Exceptions and Errata to the Initial Exceptions. Contrary to Mr. Payne's recollection,¹²⁷ no LPG member lives on link C31.

All 22 members¹²⁸ of the LPG support the adoption of Route GN5, which impacts 36 habitable structures, or one-fourth of the number impacted by GN6, and uses or parallels existing right-of-way for 41% of its length.

¹²⁴ Tr. at 550-559.

¹²⁵ See the photograph of the crossing at page 7 of these Replies to Exceptions.

¹²⁶ Point Peak, et. al's Exceptions to the PFD at 6 (March 26, 2010.)

¹²⁷ Initial Exceptions by Robert Payne at 7 (March 26, 2010).

¹²⁸ The LPG inadvertently left out one of its members (Gordon Griffin on link C19) from its participants listed in its initial brief and initial exceptions to the PFD. An errata has been filed correcting this mistake. Thus, the LPG consists of 22 members, rather than the 21 referenced in two recent pleadings.

IV. PRELIMINARY ORDER ISSUES

B. Preliminary Order Issue No. 2: Did the notice provided by LCRA TSC comply with P.U.C. PROC. R. 22.52(a)?

The LPG contends that in Conclusion of Law (COL) No. 4, the PFD correctly states that LCRA TSC provided proper notice of the Application in compliance with PURA § 37.054 and P.U.C. Proc. R. 22.52(a).¹²⁹

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)?

The LPG supports the adoption of Route GN5 as the best alternative weighing the requirements that the Commission must consider when selecting a route. As will be discussed below, Route GN5 best balances community values, impact to habitable structures, recreational and park areas, aesthetic values, environmental integrity, airport and heliport constraints and use of existing right-of-way. In support of Route GN5, the LPG offers FOF Nos. 19 – 29, included herein in Attachment C.

2. Community Values

The community values criteria has been sufficiently tortured: from focusing only a certain open houses as representative of the community values across a county,¹³⁰ to

¹²⁹ PFD at 68.

¹³⁰ Initial Exceptions by Robert Payne at 6 (March 26, 2010); Mr. Payne only includes in his analysis the questionnaires submitted at the Burnet and Llano Open Houses.

misconstruing the meaning of the percentages after the ranking criteria,¹³¹ to claiming that only the route preferences of those participating in the proceeding mattered.¹³² However, perhaps, it is less important to rank the community values, particularly the two most competing values of maximizing distances from residences and using / paralleling existing transmission line ROW, than it is to properly weigh these factors when routing the line.

Assuming *arguendo* that using / paralleling existing ROW is just as important of a community value in the study area as maximizing the distance of the line from residences, which community value should outweigh the other? This can only be determined by comparing the advantages and disadvantages of one route, in regards to the community values, to another route.

The ALJ's recommended route GN6 uses and parallels existing existing ROW for 75% of its length.¹³³ As is discussed in these reply exceptions, most of this additional existing ROW that GN6 uses is of poor quality. GN6 also impacts 164 habitable structures.¹³⁴ In comparison, Route GN5 uses and parallels existing ROW for 41% of its length.¹³⁵ GN5 impacts only 36 habitable structures.¹³⁶ Thus, GN6 uses and parallels 82%¹³⁷ more existing ROW than GN5 at the expense of impacting 355%¹³⁸ more habitable structures than GN5.

Clearly, even if both community values are just as important to the landowners in the study area, more weight should be placed on the line's impact to habitable structures. Route

¹³¹ Commission Staff's Exceptions to the PFD at 10 (March 26, 2010); While Staff recognizes that most open houses indicated a slight preference for maximizing distance from residences, Staff refers to the percent behind the ranking criteria to be representative of the percent of persons who ranked the criteria as a top priority; however, the percent only reflects the criteria's being ranked first by those who actually included that criteria in a ranking. Not all persons who ranked criteria ranked *all* the criteria. For example, for Llano, of all the people that ranked maximize distance from residence, 55% of them ranked it as their top priority.

¹³² Initial Exceptions of Robert Payne at 6 (March 26, 2010).

¹³³ LCRA TSC Exhibit No. 13 at RRR-2R, adding Rows 2-4 for GN6 and dividing the total miles of ROW by the length of the route provided on Row 1 for GN6; also see PFD at 34.

¹³⁴ *Id.* at Row 6.

¹³⁵ LCRA TSC Exhibit No. 13 at RRR-2R, adding Rows 2-4 for GN5 and dividing the total miles of ROW by the length of the route provided on Row 1 for GN5; also see PFD at 34.

¹³⁶ *Id.* at Row 6.

¹³⁷ Calculated as follows: $75-41 = 34 / 41 \times 100$

¹³⁸ Calculated as follows: $164-36=128 / 36 \times 100$

GN5 more significantly minimizes the impact of the line on habitable structures than GN6 uses existing ROW. *See* FOF Nos. 30 – 41 in Attachment C.

a. Habitable Structures

In their initial exceptions, intervenor Point Peak would ask that the Commission only consider habitable structures in consideration of whether a route complies with the Commission's policy on prudent avoidance.¹³⁹ Further, since the ALJ and Staff have stated that all routes comply with the Commission's policy on prudent avoidance, habitable structures are irrelevant.¹⁴⁰ This argument has likely been carried over into their reply exceptions.

Point Peak's suggestion discredits the importance of the line's impact on habitable structures as a community value for the commission to consider.

Point Peak supports the use of GN6 because it would avoid Tract C16-030.01,¹⁴¹ which is owned by spouses Barbara Barron and Allen Paksima.¹⁴² Ms. Barron and Mr. Paksima do not live on their property; rather, they live in Richmond, Texas¹⁴³ – *more than 200 miles away*. Further, although GN6 is touted for being the best route from an ecological perspective,¹⁴⁴ Ms. Barron stated that the property they are wishing to protect was purchased in 2007 to be developed into a resort, hence the name "Point Peak Mountain Resort."¹⁴⁵ However, as LCRA TSC witness Rob Reid testified, Point Peak is neither a mountain nor a resort.¹⁴⁶

Thus, their advocating for GN6 is to put the line on the homesteads of residents in the Buchanan Dam and Mesquite Creek communities – where the line and its structures will be seen

¹³⁹ Point Peak et. al's Exceptions to the PFD at 2.

¹⁴⁰ LCRA TSC Exhibit 1 (Application) at 442 (Attachment 5R, Directly Affected Landowner List at p. 20).

¹⁴¹ *Id.*

¹⁴² Point Peak et.al's Exhibit 1 (Direct Testimony of Barbara Barron) at 6 (Jan. 6, 2010).

¹⁴³ LCRA TSC Exhibit 1 (Application) at 442 (Attachment 5R, Directly Affected Landowner List at p. 20).

¹⁴⁴ PFD at 28-29, *see* FOF No. 51.

¹⁴⁵ Point Peak Exhibit No. 1 (Direct Testimony of Barbara Barron) at 6 (Jan. 6, 2010).

¹⁴⁶ LCRA TSC Exhibit No. 13 (Rebuttal Testimony of Rob Reid) at 50 (Jan. 26, 2010).

24 hours / 7 days a week – to permit Ms. Barron and Mr. Paksima to clear-cut their land to turn it into a resort some day in the future. No weight should be placed on Point Peak’s attempts to trivialize the incredible number of homes and businesses in the Buchanan Dam and Mesquite Creek Communities that will be impacted – potentially condemned – by routing the line on GN6.

The LPG respectfully requests that the Commission adopt Route GN5 that better minimizes the impact of the line on habitable structures while balancing the importance of the other community values that will be discussed below.

b. City Limits

In his initial exceptions, Mr. Payne states that the PFD is inaccurate by stating *numerous* homes and business in the Buchanan Dam Community may be condemned by routing the line on GN6;¹⁴⁷ Mr. Payne states that the evidence reflects only one structure in the Buchanan Dam Community is at risk of being condemned.¹⁴⁸

While LCRA TSC witness Mr. Sybank may have only referenced one structure, Habitable Structure 100, as potentially needing to be condemned, the evidence reflects that several structures are indeed at risk. As the LPG previously stated, 40 homes and business come within 200 feet, and 22 within 100 feet, of the proposed line in the Buchanan Dam Community. As LCRA TSC reiterated in its initial exceptions, the average ROW is 140 feet;¹⁴⁹ thus, any structure within 70 feet of either side of the line may potentially be condemned. Considering the exact location of the line has not yet been determined, the number of homes and businesses in the ROW that may be condemned is sizeable.

The LPG respectfully requests that the Commission avoid the unincorporated city of Buchanan Dam by adopting Route GN5.

¹⁴⁷ Initial Exceptions by Robert Payne at 9 (March 26, 2010).

¹⁴⁸ *Id.*

¹⁴⁹ LCRA TSC Exceptions to the PFD at 5 (March 26, 2010).

c. Rural Residential Subdivisions

On route GN6, two communities with several subdivisions will be adversely impacted by the route. While GN11 and GN10M avoids one of these communities, these routes still adversely impact one a densely populated area on their approach into the Newton Station, the Mesquite Creek Community. Route GN5, however, would avoid subdivisions in both communities.

i. Subdivisions in Buchanan Dam Community

As Staff points out in its initial exceptions, the PFD's observation that many of the homes and businesses in the Buchanan Dam Community were built after the construction of transmission lines in the area does not recognize the disparity between the size of the existing lines compared to the proposed 345 kV line.¹⁵⁰ The LPG agrees with Staff that the existence of a 69 kV line in an area should not make the construction of a 345 kV line inconsequential to the community.

Further, Mr. Payne's statement in his initial exceptions that the existing transmission line on C14 "predates all the habitable structures along C14, certainly predating the campers and mobile homes that have been moved on [sic],"¹⁵¹ is presumption at best. More importantly, this statement is not supported by the evidence.

In fact there are many residential subdivisions on GN6 that will be adversely impacted. These do not only include several in the Buchanan Dam Community, but also many in the Mesquite Creek Community, discussed below.

In the Buchanan Dam Community, the Cliffs at Waters Ridge, the Grand Sabana and the Willows subdivisions all will be impacted by the proposed 345 kV line.¹⁵² Currently, many lots in these subdivisions have uninterrupted views of Lake Buchanan and Inks Lake,¹⁵³ two of the seven Highland Lakes. Due to the size of the 345 kV structures, these views will be destroyed. The existence of smaller transmission lines in the area does not mitigate this impact of the

¹⁵⁰ Commission Staff's Exceptions to the PFD at 11.

¹⁵¹ Initial Exceptions to the PFD by Robert Payne at 10 (March 26, 2010).

¹⁵² LPG Exhibit No. 28 (Cross Rebuttal Testimony of William J. Maddux) at 4, 7-9 (Jan. 22, 2010).

¹⁵³ *Id.* at 4, 7 and Attachment WJM-2, 3, and 5.

proposed 345 kV on these subdivisions.

ii. Subdivisions in Mesquite Creek Community

In the Mesquite Creek Community, no existing transmission lines exist.¹⁵⁴ The 345 kV transmission line would cut through a community unspoiled by transmission lines and impact numerous subdivisions. For example, on C28, 7 groups of U.S. Postal Service boxes containing *112 mail boxes* sit along the side of the road for the surrounding neighborhood.¹⁵⁵ However, for Mr. Payne, this community does not even exist as a consideration as it is not in the “heart” of the study area.

The impact of the line on the Mesquite Community warrants consideration that it has not been afforded by other intervenors to the north of Lake Buchanan or the ALJ. Recommending Route GN6, GN10M or GN11, both using some combination of C27, C28, C29 and C30 to approach the Newton Station, will completely devastate a densely populated community¹⁵⁶ along a recreational creek.¹⁵⁷ For GN6, this populated community is in addition to that of the Buchanan Dam Community and the community outside of Fredericksburg at the beginning of the proposed line. Thus, by adopting GN6, the Commission will ensure that the line impacts all of the more populated communities in the study area of this project.

The LPG respectfully requests that the Commission place the appropriate weight on the impact of the line on the Mesquite Creek Community and adopt Route GN5 that avoids not only the populated areas around Buchanan Dam but also the populated links around Mesquite Creek, including C27, C28, C29 and C30.

d. Lakes and Reservoirs

Route GN6 impacts two lakes that provide aesthetic and recreational resources to the

¹⁵⁴ LCRA Exhibit No. 1 (Application) at Attachment 1 (EA), Vol. 2, Figure 6-1(c); also *see* LCRA TSC Exhibit No. 14 (transmission map).

¹⁵⁵ LPG Exhibit No. 1 (Direct Testimony of S. Alan Skinner) at 35 (Attachment D, photo).

¹⁵⁶ Tr. at 637.

¹⁵⁷ PFD at 22-23; also *see* LPG Exhibit No. 4 (Direct Testimony of Jack Clark) at 7 (Jan. 6, 2010).

Buchanan Dam Community and present cost and engineering challenges to LCRA TSC.¹⁵⁸ Lake Buchanan and Inks Lake are two of the Highland Lakes that provide views of high aesthetic value.¹⁵⁹ Lake Buchanan is in close proximity to links C14 and C17 of GN6, and Inks Lake is crossed by link C17 of GN6.¹⁶⁰ Further, in providing recreational opportunities, which are discussed below under Recreational and Park Areas, these lakes also supply tourism to the Buchanan Dam area, feeding the economy of the Buchanan Dam Community.¹⁶¹

Conversely, Route GN5 does not impact any lakes. The LPG requests the Commission to avoid routing the line through the Buchanan Dam Community to prevent harm to its recreational resources.

e. Airports, Airstrips and Heliports

The LPG expects that the LCRA TSC or other intervenors will reply to its discussion in its initial exceptions on Route GN6's interference with the clearance of the helicopters at the Cassie VFD Heliport.¹⁶² Their replies to the LPG's exceptions will likely suggest that the 25:1 slope, which the structures on C17 will exceed,¹⁶³ is not an issue due to the existence of the T-109 structures in the same area. However, the T-109 is not a double-circuit capable 345 kV line but a single circuit 138 kV line¹⁶⁴ that cannot support a 345 kV line.¹⁶⁵ Structures for 138 kV lines are much shorter than 345 kV line structures. In a recent CCN proceeding, monopole structures on a double-circuit 138 kV line were only 80-feet tall.¹⁶⁶ Further, because C17 will

¹⁵⁸ LCRA TSC Exhibit No. 1 (Application) at 146 (EA at 3-2).

¹⁵⁹ LCRA TSC Exhibit No. 1 (Application) at 130 (EA at 2-51).

¹⁶⁰ LCRA TSC Exhibit No. 1 (Application) at Attachment 1 (EA), Vol. 2, Figure 6-1b.

¹⁶¹ LCRA TSC Exhibit No. 1 (Application) at 125 (EA at 2-46).

¹⁶² Initial Exceptions of LPG at 16-18 (March 26, 2010).

¹⁶³ LCRA TSC Exhibit 1 (Application) at 31 (Question No. 21).

¹⁶⁴ Tr. at 220-21.

¹⁶⁵ Tr. at 449-50.

¹⁶⁶ *Application of Oncor Electric Delivery Company to Amend a CCN for a Proposed Transmission Line within Kaufman County*, Docket No. 35996, Order at 3 (Sept. 17, 2009); see FOF No. 15.

parallel the T-109 near the Cassie VFD Heliport, the T-109 does not represent the location of the C17.

The only evidence available regarding the impact of the proposed line on the Cassie VFD Heliport is in the Application at Question No. 21: the 345 kV structures will exceed the 25:1 slope; meaning, the helicopters used by the volunteer fire department to serve the Buchanan Dam Community will not have enough slope to clear the 345 kV structures at their nearest point to the heliport. As the LPG stated in its initial exceptions, the PFD's reliance on LCRA TSC's general dismissal of all constraints as not being insurmountable does not explain how this constraint will be avoided, nor does it eliminate the requirement for LCRA TSC to notify the FAA.

The issue presented by the Cassie VFD Heliport is avoided by adopting Route GN5. Thus, the LPG respectfully requests that the Commission adopt Route GN5.

3. Recreational and Park Areas

In his initial exceptions, intervenor Robert Payne addresses the proximity of link C20 to the Colorado Bend State Park and Post Oak Falls, significant recreational areas.¹⁶⁷ However, link C20 is not included in Route GN10M, GN11 or GN5.¹⁶⁸ In fact, no intervenor has advocated for using link C20.

Conversely, Mr. Payne, among several other intervenors owning land north of Lake Buchanan, are advocating for the adoption of Route GN6 that also include links that impact significant recreational areas. Route GN6 affects four parks and recreational areas and is within the foreground visual zone of parks and recreational areas for more than 4 miles.¹⁶⁹ Link C17 on GN6 impacts Inks Lake and Inks Lake State Park. Link C17 crosses over Inks Lake.¹⁷⁰ Further, as Staff stated in its initial exceptions, "GN6 is clearly visible from Inks Lake State Park."¹⁷¹

¹⁶⁷ Initial Brief of Robert Payne at 10-11 (March 26, 2010).

¹⁶⁸ LCRA TSC Exhibit No. 1 (Application) at 491 (Attachment 6, Description of the Line's Alternate Routes).

¹⁶⁹ LCRA TSC Exhibit N0. 13 (Rebuttal Testimony of Rob Reid) at RRR-2R.

¹⁷⁰ LCRA TSC Exhibit No. 1 (Application) at 491 (Attachment 6, Description of the Line's Alternate Routes); see description of Link C17.

¹⁷¹ Commission Staff's Exceptions to the PFD at 12 (March 26, 2010).

Similarly, links C29 and C30 of GN6 or GN11 and GN10M, respectively, impacts the recreational Mesquite Creek.¹⁷² Mesquite Creek provides opportunities for fishing, swimming and bird watching.¹⁷³

The recreational park areas in the communities of Buchanan Dam and Mesquite Creek provide significant recreational activities to two populated communities and should be avoided.

Route GN5 does just that. Route GN5 crosses the Colorado River near or adjacent to an existing pipeline easement,¹⁷⁴ avoiding the recreational parks north of Lake Buchanan but also avoids those in the Buchanan Dam and Mesquite Creek communities. The LPG respectfully requests the Commission to adopt Route GN5 and offers FOF Nos. 42-47, included in Attachment C, in support thereof.

4. Historical and Aesthetic Values

Point Peak attempts to minimize the significance of Route GN6's impact on 164 habitable structures by claiming that aesthetic values, because they are subjective, should not be considered.¹⁷⁵ In making this argument, Point Peak is again claiming that the impact of the line on habitable only should be considered in an evaluation of the route's compliance with the Commission's policy of prudent avoidance.¹⁷⁶ However, even though aesthetics may be subjective, a common ground is easily identifiable.

Considering the opposition by participants in this to the routing of the proposed line on their properties, it is apparent that the 345 kV line and its 180-foot structures are not considered aesthetically pleasing by anyone. What is material to the discussion, however, is the impact of the unsightly line on the community and landowners in which the line is routed. The LPG

¹⁷² LCRA TSC Exhibit No. 1 at 126 (EA at 2-47); also *see* LPG Exhibit No. 4 at 7, Direct Testimony of Jack Clark. Mr. Clark, a landowner affected by C29 and C30, states that Mesquite Creek is a recreational center that serves as a place to enjoy fishing, bird watching, picnicking, and floating and wading in the deep water holes.

¹⁷³ *Id.*

¹⁷⁴ LCRA TSC Exhibit No. 1 (Application) at 498 (Attachment 6, Description of Line Alternate Routes).

¹⁷⁵ Point Peak et.al Exceptions to the PFD at 2 and 5.

¹⁷⁶ *Id.*

contends that by routing the line through rural, less populated areas minimizes the impact of the line on the aesthetic values of a community as it impacts fewer people.

Route GN5 avoids the populated communities where the line would have a devastating impact on the home and residences to which it would be routed in close proximity. Thus, the LPG respectfully requests that the Commission adopt GN5 and offers FOFs 48-51, included in Attachment C, in support thereof.

5. Environmental Integrity

The LPG disagrees with Mr. Payne's statement in his initial exceptions that this criteria is "a slam dunk" for selecting GN6.¹⁷⁷

Going south of Lake Buchanan, as GN6 does, and south of the City of Lampasas, as GN6, GN10M and GN11 do) is not better from an environmental perspective, much less a "slam dunk." In fact, although the community of Mesquite Creek is more densely populated than that found on link C31,¹⁷⁸ running north of the City of Lampasas, the land has not been clear-cut and runs through a considerable amount of floodplain, which as previously stated under the LPG's general discussion, reduces the likelihood of the presence of endangered species habitat.¹⁷⁹

Further, as the evidence reflects, the landowners in the Mesquite Creek Community have taken steps to preserve their environment. For example, Mrs. Hales (Tract C30-014) testified that her property is "a completely natural undisturbed piece of land that is traversed only by foot on seventy-five percent of it."¹⁸⁰ This natural setting includes a 40-foot ravine, two caves, very old and large cedar trees, and a freshwater spring that Mrs. Fischer-Hales and her family use to preserve wildlife, for bird watching and to teach "conservation and the old ways of life."¹⁸¹ Mrs. Fischer-Hales is not waiving a wildlife conservation plan as a weapon in this proceeding; rather,

¹⁷⁷ Initial Exceptions by Robert Payne at 33 (March 26, 2010).

¹⁷⁸ Tr. at 637.

¹⁷⁹ Tr. at 1545-47.

¹⁸⁰ LPG Exhibit No. 3 (Direct Testimony of Kaye Fischer-Hales) at 6 (Jan. 6, 2010).

¹⁸¹ *Id.* at 6-7.

she is simply attempting to protect the natural features of her property that she and her family enjoy.

Additionally, the southern ending segments, although consisting of numerous subdivisions, still have a significant amount of potential GCW habitat. The maps provided by CJ Ranch witness Mr. Morrison and attached herein as Attachment A, show considerable GCW habitat on C29 and C30 and sparse habitat on C31¹⁸²

Moreover, although GN6 has been ranked as the best route from an environmental integrity perspective, the LPG contends that its advantages have been overstated. Considering the poor quality of the existing ROW, discussed below under subsection 9 below, and the necessity to clear-cut the land despite the use of existing ROW, additional, unaccounted for habitat fragmentation is likely to result. Moreover, similar to Route GN6, Route GN5, like all routes, does not cut through any known habitat of environmental species.¹⁸³

Any additional environmental benefits that Route GN6 may have over Route GN5 are not significant and do not make GN6 the better route once other routing factors are considered. Thus, the LPG excepts to the PFD on this issue and requests FOF Nos. 53-64, included in Attachment C, be adopted in support of routing the line on GN5.

7. Engineering Constraints

In support of Route GN5, the LPG offers FOF Nos. 66-72, included in Attachment C.

8. Costs

The LCRA TSC excepted to the ALJ's finding that its ROW acquisition costs are inaccurate.¹⁸⁴ The LCRA TSC stated that such data was just as accurate as any other cost estimates discussed during the hearing.¹⁸⁵ This argument is not compelling. In fact, this

¹⁸² CJ Ranch Exhibit No. 2 (Direct Testimony of Michael Morrison) at 33-34 (Attachment MM-3).

¹⁸³ LCRA TSC Exhibit No. 13 (Rebuttal Testimony of Rob Reid) at 22-23 (Jan. 26, 2010).

¹⁸⁴ LCRA TSC Exceptions to the PFD at 8 (March 26, 2010).

¹⁸⁵ *Id.*

argument supports the LPG's position that all of LCRA TSC's cost data, including ROW acquisition and habitat mitigation costs, are incomplete and unreliable. Consequently, cost should not be a basis for choosing one route over another.

Further, as stated in LPG's general discussion, the cost data used to select route GN6 does not include the added cost for using monopoles on certain sections of the route. The additional cost of the monopoles, which would be necessary in at least three communities on Route GN6 and at least two communities on route GN11 and GN10M would add several million dollars to the cost of those routes. Other than on link C3, Route GN5 would not pass through the same densely populated communities as GN6, GN10M and GN11, namely the Buchanan Dam Community and the Mesquite Creek Community, eliminating the need to factor in the cost of monopoles.

The LPG respectfully requests that the Commission place little weight on the cost differences between the routes when adopting a route. The cost estimates are based on unreliable and incomplete data that if correct would likely not result in one route costing significantly more than any other. Thus, the LPG requests that its FOF Nos. 73-85 be adopted.

9. Utilizing Existing/Parallel ROW

The typical advantages of adopting a route that uses more existing right-of-way include reduced easement work, cost savings, and reduced habitat fragmentation. These benefits do not exist in the case of Route GN6. Thus, the intervenors' touting of Route GN6's use and paralleling of 75% more existing ROW overstates the existing ROW used. Likewise, the ALJ overvalues Route GN6's existing ROW when recommending the route to the Commission.

Route GN6 only uses 12 more miles of existing ROW than GN5. At least 8 miles of this additional ROW is doubtful and its quality is poor. This fact was put in evidence by the owner of the property that would be traversed by C14 for 8 of its 10 miles, Mr. McMillan. As Mr. McMillan's easement states, the width of the easement is not beyond the width of the poles. Further, the ground under the existing 69 kV line that would be needed for the 345 kV ROW has not been clear-cut.

Considering the lack of benefit associated with GN6's use of additional ROW, the

disadvantages of using GN6, particularly its impact on 164 habitable structures, far outweigh any advantages. The LPG respectfully request the Commission to adopt Route GN5 that best balances the competing community values of using/paralleling existing ROW and maximizing the distance from habitable structures and offers FOF Nos. 86-90 in support thereof.

10. Prudent Avoidance

In support of Route GN5, the LPG offers FOF Nos. 91-96 included in Attachment C.

V. CONCLUSION

The LPG appreciates the opportunity to address the Commission. The LPG respectfully requests that the Commission reject the ALJ's recommendation in this proceeding. Route GN6 would devastate two populated communities. Staff's recommended Route GN10 and LCRA TSC's preferred GN11 only alleviate harm to one of those two communities.

Route GN5 best balances competing community values and best protects the homes and business of Texans without any additional expense to the environment. The LPG respectfully requests the Commission to adopt Route GN5.

Respectfully submitted,

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**ATTORNEYS FOR
LANDOWNERS PRESERVATION GROUP**

CERTIFICATE OF SERVICE

I certify that I have served a copy of LPG's Replies to the Exceptions upon all known parties of record by fax and/or first class mail on this the 5th day of April 2010.

C. R. T.

Carrie R. Tournillon

ATTACHMENT A

MAPS OF POTENTIAL GOLDEN-CHEEKED WARBLER HABITAT ON ROUTE ENDING SEGMENTS (CJ Ranch Exhibit 2 at MM-3)