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| APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE TWIN BUTTES TO MCCAMEY D 345-KV CREZ TRANSMISSION LINE IN TOM GREEN, IRION, AND SCHLEICHER COUNTIES | § § § § § § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
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**LCRA TRANSMISSION SERVICES CORPORATION'S
OBJECTIONS TO SLAUGHTER INTERESTS, LTD'S FIRST RFI**

TO THE HONORABLE LILO POMERLEAU:

Applicant, LCRA Transmission Services Corporation (LCRA TSC or Applicant) hereby files these Objections to Slaughter Interests, Ltd's (Slaughter) First RFI (Objections), and in support thereof would respectfully show the following:

I. Introduction

LCRA TSC filed its application to amend its Certificate of Convenience and Necessity (CCN) with the Public Utility Commission (PUC) on January 15, 2010. Under Order No. 6, the Corrected Procedural Schedule, discovery on the Applicant's direct case closed on March 17, 2010. Under Order No. 1, all documents must be served on a party by 3 PM, or else they will be considered to have been received on the next business day.¹ On March 17, at 2:52 PM, LCRA TSC was served with Slaughter's First Request for Information (First RFI), consisting of 34 questions with 63 discrete subparts. Under Order No. 1, parties must file objections to discovery requests within five working days of receipt.² Therefore, these Objections are timely filed.

¹ Order No. 1 at 7.

² *Id.* at 8.

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II. Certificate of Conference

Counsel for LCRA TSC, Bill Medaille, repeatedly conferred in good faith with counsel for Slaughter, Chris Sileo, by telephone on March 22 and March 23. LCRA TSC and Slaughter were able to compromise on issues regarding Slaughter's Second RFI. However, the parties were unable to come to an agreement regarding the First RFI. Therefore, LCRA TSC is filing these Objections.

III. History

LCRA TSC filed its application in this case on January 15, 2010. In the two months following that filing, approximately 30 landowners have intervened. LCRA TSC has been served with discovery from ten parties, including several hundred questions.

The procedural schedule for this case was worked out during the first and second prehearing conferences, on February 8 and March 1, respectively. At the second prehearing, LCRA TSC made a specific plea that parties not wait until the very last day to serve LCRA TSC with discovery:

MR. RODRIGUEZ: We haven't fielded as many RFIs -- requests for information -- in this case as we have in the other case yet, but I would simply ask folks to please not wait until the very last day, if at [all] possible. If you have questions, send them to us and send them to us now so we can answer them. But I would simply ask, so that we don't have to object, please don't wait until the afternoon of the 17th and then send 150 or 200 questions, because that's a lot to have to respond to.³

Slaughter, which intervened on January 28, was a party to this case during both of those prehearings. However, counsel for Slaughter⁴ filed a notice of representation only on March 15, two days before the close of discovery on the Applicant's case. Counsel for Slaughter then proceeded to do what LCRA TSC had requested not be done, file extensive discovery not just on the last day, but at the very last minute (or later).

³ 2nd Prehearing Tr. at 23 (March 1, 2010).

⁴ Scott, Douglass, and McConnico, LLP.

As discussed above, Slaughter's First RFI was served on LCRA TSC at 2:52 PM, on Wednesday, March 17, *eight minutes* before the close of discovery. This request was followed by Slaughter's Second RFI, served at 4:01 PM that same day, or an hour after discovery had closed. These two last-minute RFIs posed a total of 42 questions, including 78 discrete subparts.

Many of the questions ask for information which has already been provided by LCRA TSC in response to other discovery requests, suggesting that counsel for Slaughter has not familiarized itself with the record. While parties clearly have a right to hire counsel at any point during the proceeding, late-arriving counsel, like late-arriving parties, must take the record as it stands, and should be required to familiarize themselves with the record before launching into large scale discovery.

IV. LCRA TSC's objections to Questions 1-30, 1-31, 1-32, and 1-33

A. Summary.

LCRA TSC objects to four questions out of the 34 in Slaughter's First RFI: Questions 1-30, 1-31, 1-32, and 1-33. Each of these questions draws an entirely new line segment and suggests a potential new route for the transmission line, and asks LCRA TSC an extensive series of questions about such an idea. LCRA TSC objects to each of these questions for the same reasons:

- 1) The questions require LCRA TSC to conduct new investigations and to create new documents that do not already exist;
- 2) The questions ask for information irrelevant to the case at hand, because none of these reroutes were proposed or discussed in testimony by any party to this case; and
- 3) The questions are unduly burdensome and unlikely to produce benefits proportionate to their burden.

B. Nature of the questions.

Questions 1-30 through 1-33 all follow a similar format,⁵ so LCRA TSC will use the first as an example. It reads:

Please provide all information requested by the M.D. Bryant Family Trust, LP in their RFIs BT 2-1 through BT 2-8 for a route that uses the preferred route through link A-8, then follows link A-12 to a point approximately 500 feet south of U.S. highway 67, and then follows a new link A-12A that runs diagonally from the point approximately 500 feet south of U.S. highway 67 to the junction point of links A-13, A-15, A-16, and then continues along A-16, A-18, A-28, A-29, A-32, A-37, and A-40 to the McCamey D Substation. Link A-12A is depicted on Attachment 1.

As can be seen, each of these questions designs an entirely new route using some existing links from various routes combined in a new way with a new link created by Slaughter. The question then ask for “all information requested by the M.D. Bryant Family Trust” in their Second RFI.⁶ That RFI, in turn, asks eight questions about a hypothetical reroute. Thus, each question objected to here is not actually a single question. Rather, each question *restates in full all questions in an entire set of RFIs*. Thus, each of these questions is really a separate set of RFIs in its own right, and the four questions comprise 32 discrete subparts.

C. The questions require LCRA TSC to create new information and new documents.

Each of the questions to which LCRA TSC objects proposes *an entirely new link and a new route*. However, none of the specifics link or routes proposed were ever studied by LCRA TSC or included in its application. To answer these four (really 32) questions, LCRA TSC would be required to create information and documents that do not exist, and to perform new analysis. LCRA TSC would be required to effectively return to the drawing board and lay out the new routes, looking for new landowner information, new environmental data, and new engineering constraints. Additionally, since costs for routes are not calculated on a segment-by-

⁵ See Exhibit 1 to these Objections for Questions 1-30, 1-31, 1-32, and 1-33 in full.

⁶ See Exhibit 2.

segment basis, but rather end-to-end for entire routes (as LCRA TSC has explained previously in RFI responses), LCRA TSC would be required to recalculate costs along each entire new route.

Discovery in these types of proceedings is very broad, but it is not unlimited. Nothing in the scope of discovery under Commission's Procedural Rules contemplates allowing one party to force another party to create entirely new information:

Discoverable matters include...documents..., tangible things..., knowledge, mental impressions, and opinions of persons who will testify, explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought.⁷

The information sought in Questions 1-30 through 1-33 does not fit within any of these categories, as it does not currently exist in any document and does not exist in any form as knowledge, information, or mental impressions of any employee of LCRA TSC or its consultant, PBS&J. These questions thus are not asking for *information*, they are asking for LCRA TSC to perform work on behalf of the intervenor.

Intervening parties may, of course, propose whatever they wish in testimony. However, LCRA TSC should not be required to perform the intervenors' work for them and create entirely new documents. Such a demand is outside the scope of discovery. If intervenors in PUC cases are allowed to simply order the applicant to construct entire new routes and perform new analysis regarding those new routes where, when, and how they choose, there will be no end to the demands place on applicants now and in future cases, and the applicant's right to present its own case, as opposed to presenting the intervenors' cases, will be greatly impacted. Or stated differently, an applicant is under no obligation under the Commission's discovery rule or the rules of civil procedure to perform work for an intervenor that the intervenor should perform for

⁷ P.U.C. Proc. R. § 22.141(a) (Scope).

him or herself. This axiom is particularly applicable when the request to perform such work comes within the *last few minutes* of the discovery period and would require LCRA TSC to, in essence, construct an entire new section of its CCN application at a time when it needs to focus its energies on the preparation of rebuttal testimony and preparation for hearing.

D. The questions ask for information that is irrelevant to the matter at hand.

Even if LCRA TSC were required to create entirely new information in response to these four questions, such information would be completely irrelevant to the case at hand. All intervenor direct testimony in this proceeding was required to be filed as of March 17. Neither Slaughter *nor any other intervenor in this case* has proposed or discussed any of the four re-routes which Slaughter now seeks to have LCRA TSC analyze. Since the time period for filing direct testimony is now closed, and since rebuttal and cross-rebuttal testimony may only be used to rebut matters that were previously raised in direct testimony, any analysis of these matters will not aid in evaluating the case at hand. LCRA TSC should not be required to create new documents and perform new analysis on items that are so clearly irrelevant.

E. The questions pose an undue burden that will outweigh any expected benefit.

As explained above, these four (really 32) questions would require LCRA TSC to perform an entirely new analysis and create new documents. The questions would go beyond the bounds of discovery and require LCRA TSC to perform work for the intervenor, analyzing re-routes *that the intervenor did not even bother to propose in its testimony*. All of this work would take place during the very limited time in which LCRA TSC must read, analyze, and respond to factual and expert witnesses offered by roughly 25 intervenors. By forcing LCRA TSC to conduct an entirely new analysis and create entirely new documents at a time when it should be responding to intervenor testimony, these questions create a significant and undue burden on

LCRA TSC. However, since the time period for direct testimony is now closed, and the intervenor has not proposed any of these re-routes in its testimony, the likely benefit of such new analysis would be minimal at best. Under both the Commission's rules and the Rules of Civil Procedure, the Judge may limit discovery if the burden of such discovery is undue and outweighs the likely benefit.⁸

V. Conclusion

Slaughter served LCRA TSC with two sets of RFIs, asking 42 questions in (or after) the very last minutes of the discovery period. LCRA TSC has attempted to work with Slaughter, and is willing to answer 38 of these 42 questions, including some questions that were filed more than an hour after the close of discovery. However, the four remaining questions are improper because they do not ask for either documents or information that is already in LCRA TSC's possession. Rather, they demand that LCRA TSC conduct new analysis and create irrelevant new information that the intervenor thinks might, in some unarticulated way, be useful. Allowing such questions would create a system ripe for abuse. Further, these questions are entirely irrelevant to the proceeding, because none of the re-routes they purport to cover were ever proposed in the testimony of any intervenor. Finally, LCRA TSC is now well into the limited period in which it must respond to all intervenor direct testimony. Requiring LCRA TSC to turn away from responding to testimony in order to analyze entirely new routes under the same criteria in Table 6-1 to which LCRA TSC subjected its eight proposed routes *months ago* creates an unreasonable and undue burden on LCRA TSC, a burden which produces no benefits.

VI. Prayer

FOR THESE REASONS, LCRA TSC objects to Questions 1-30, 1-31, 1-32 and 1-33 in Slaughter's First RFI, and respectfully requests the ALJ to order that LCRA TSC is not required

⁸ P.U.C. Proc. R. §22.142(a)(1)(D); Tex. R. Civ. Pro. 192.4(b).

to answer these questions. LCRA TSC respectfully requests that it be granted any other relief to which it may show itself entitled.

Respectfully submitted,

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ATTORNEYS FOR LCRA TRANSMISSION
SERVICES CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on this the 24th day of March 2010, by facsimile, First-Class U.S. mail, or by hand delivery.


William Medaille

EXHIBIT 1
Questions 1-31 through 1-33 from Slaughter Interest's First RFI
(pages 11- 14)

1-30 Please provide all information requested by the M.D. Bryant Family Trust, LP in their RFIs BT 2-1 through BT 2-8 for a route that that use the preferred route through link A-8, then follows link A-12 to a point approximately 500 feet south of U.S. highway 67, and then follows a new link A-12A that runs diagonally from the point approximately 500 feet south of U.S. highway 67 to the junction point of links A-13, A-15, A-16, and then continues along A-16, A-18, A-28, A-29, A-32, A-37, and A-40 to the McCamey D Substation. Link A-12A is depicted on Attachment 1.

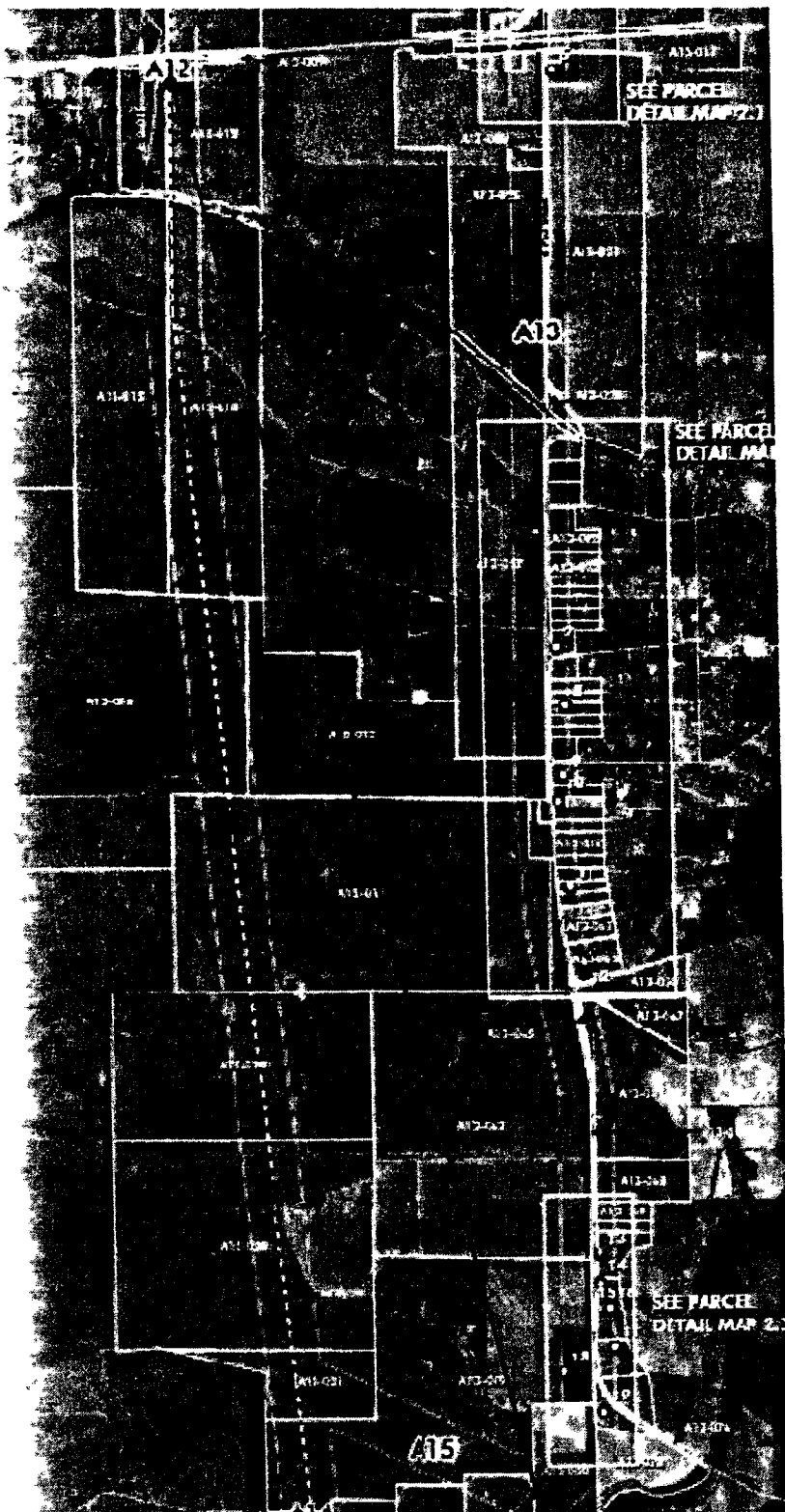
1-31 Please provide all information requested by the M.D. Bryant Family Trust, LP in their RFIs BT 2-1 through BT 2-8 for a route that that use the preferred route through link A-8, and then follows a new link A-12B that runs diagonally from the end of link A-8 to the junction point of links A-13, A-15, A-16, and then continues along A-16, A-18, A-28, A-29, A-32, A-37, and A-40 to the McCamey D Substation. Link A-12B is depicted on Attachment 2.

1-32 Please provide all information requested by the M.D. Bryant Family Trust, LP in their RFIs BT 2-1 through BT 2-8 for a route that uses A-1, A-2, A-5, and the portion of A-7 down to the point just south of RM 853 on tract A7-005 where segment A7 turns to the southeast, and then follows a new link A-7A that would run in a westerly direction along the south side of RM 853 to the junction point of links A-6, A-8, and A-9 on tract A6-005 about 260 feet south of RM 853 and then continues along the preferred route thereafter. Link A-7A is depicted on Attachment 3.

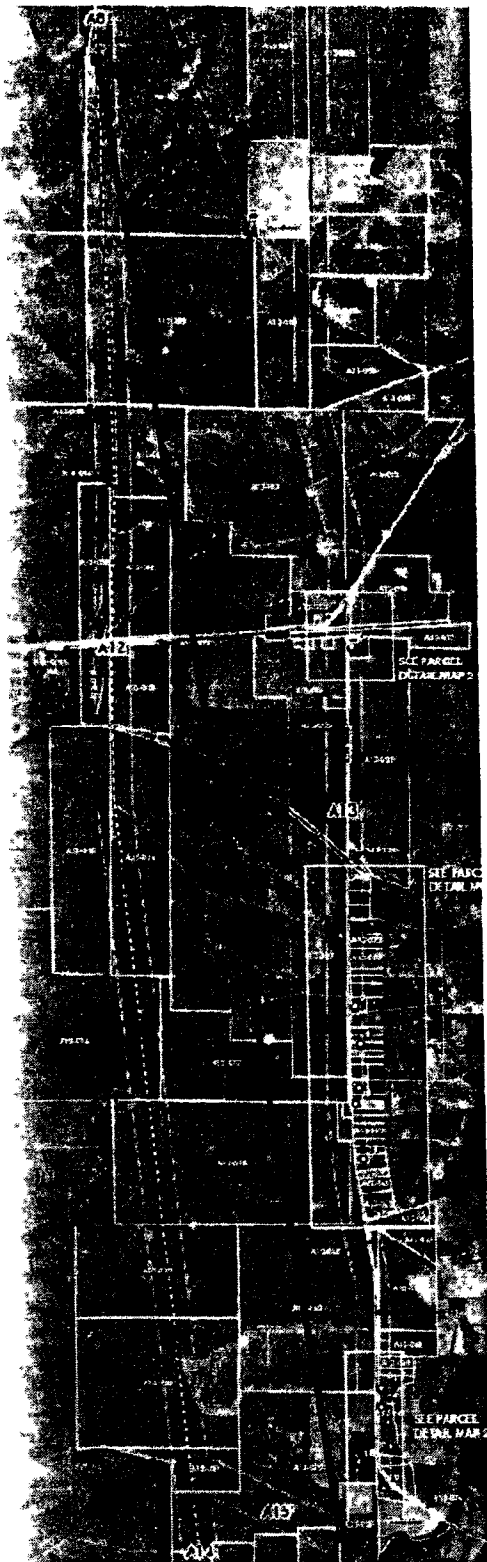
1-33 Please provide all information requested by the M.D. Bryant Family Trust, LP in their RFIs BT 2-1 through BT 2-8 for a route that uses A-1, A-2, A-5, and the portion of A-7 down to the point just south of RM 853 on tract A7-005 where segment A7 turns to the southeast, and then follows link A-7A as described in RFI 1-32, to the junction point of segments A-6, A-8, and A-9, then follows link A-8, and then follows link A-12 to a point approximately 500 feet south of U.S. highway 67, and then follows link A-12A as described in RFI 1-30 to the junction point of segments A-13, A-15, A-16, and then continues along A-16, A-18, A-28, A-29, A-32, A-37, and A-40 to the McCamey D Substation.

1-34 Please state all facts known to LCRA or PBS&J regarding the Middle Concho River as it flows along through the study area. Please produce all documents concerning your answer.

Attachment 1 to Slaughter Interests Ltd.'s First RFI to LCRA TSC – Link A12A



Attachment 2 to Slaughter Interests Ltd.'s First RFI to LCRA TSC – Link A12B



Attachment 3 to Slaughter Interests Ltd.'s First RFI to LCRA TSC – Link A7A

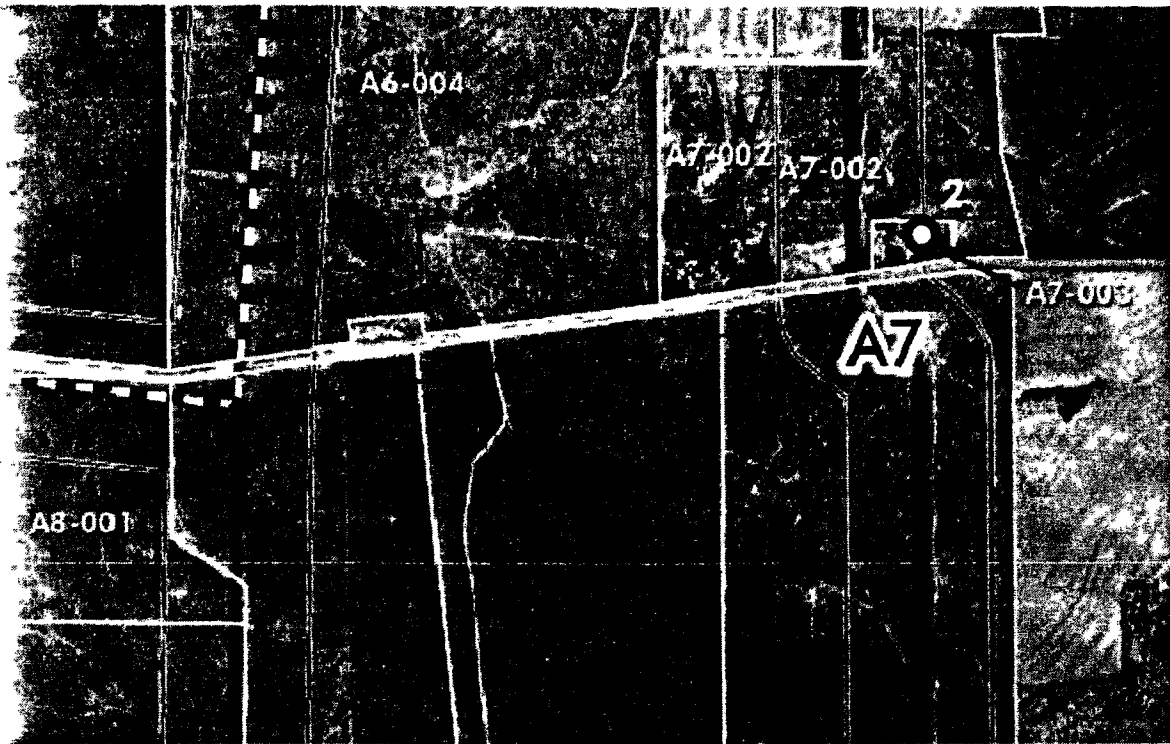


EXHIBIT 2

**Questions 2-1 through 2-8 from Bryant Family Trust's Second RFI Supplement
(pages 7-8)**

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| APPLICATION OF LCRA | § | |
| TRANSMISSION SERVICES | § | BEFORE THE |
| CORPORATION TO AMEND ITS | § | |
| CERTIFICATE OF CONVENIENCE AND | § | STATE OFFICE |
| NECESSITY (CCN) FOR THE | § | |
| PROPOSED TWIN BUTTES TO | § | OF |
| MCCAMEY D 345-KV CREZ | § | |
| TRANSMISSION LINE IN TOM GREEN, | § | ADMINISTRATIVE HEARINGS |
| IRION, AND SCHLEICHER COUNTIES, | § | |
| TEXAS | § | |

**M.D. BRYANT FAMILY TRUST'S
SUPPLEMENTAL SECOND REQUEST FOR INFORMATION TO LCRA TSC**

BT 2-1 Please provide estimated costs and all calculable data for the criteria in Table 6-1 of the Environmental Assessment and Alternative Route Analysis, for the following proposed modification to link a13 described below and depicted on Attachment 1 (hereinafter link "a13A"):

Starting at the northern end of link A16, instead of turning onto link a15 or link a13, new link a13A would continue north on a straight line to a point approximately 2,500 feet south of Highway 67. Link a13A would begin at the northern end of link a16 approximately 1,000 feet west of proposed link a13. The distances between link a13A and proposed link a13 would vary as the links run north, however link a13A would be positioned so that it is no closer than 550 feet to a habitable structure on the east side of FM 2355. Once it reaches a point approximately 2,500 feet south of Highway 67, link a13A would turn approximately 25 degrees to the northeast toward proposed link a13, and run for approximately 2,400 feet before reconnecting to proposed link a13.

BT 2-2 Please provide estimated costs, and all calculable data for the criteria in Table 6-1 of the Environmental Assessment and Alternative Route Analysis for Routes TM6 and TM8 using link a13A (described in RFI BT 2-1) in place of proposed link a13.

BT 2-3 Please describe the cost elements that are added or subtracted (e.g., costs of equipment, angle structures, ROW acquisition, etc.) to obtain an estimated cost for link a13A (described in RFI BT 2-1), and Routes TM6 and TM8 using link a13A in place of proposed link a13.

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- BT 2-4 Please compare Route TM5, and each routing consideration that caused LCRA TSC to select Route TM5 as its preferred route, to Routes TM6 and TM8 using link a13A (described in RFI BT 2-1) in place of proposed link a13.
- BT 2-5 Please identify, generally describe the type of, and provide the distance from centerline for all habitable structures that would be within 500 feet of the centerline of link a13A.
- BT 2-6 In LCRA TSC's opinion, is link a13A (described in RFI BT 2-1) a viable, reliable, and constructible link for this project? If not, please explain why not.
- BT 2-7 In LCRA TSC's opinion, are routes TM6 and TM8, modified to use link a13A (described in RFI BT 2-1) in place of proposed link a13, viable, reliable, and constructible routes for this project? If not, please explain why not.
- BT 2-8 In LCRA TSC's opinion, what is the best way to connect the northern end of link a13A (described in RFI BT 2-1), from a point between 500 to 3,500 feet south of Highway 67, to proposed link a13 without impacting landowners other than Bryant Trust?