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**SOAH DOCKET NO. 473-10-4106  
PUC DOCKET NO. 37956  
REBUTTAL TESTIMONY  
OF DOUGLAS L. MULVEY, WITNESS FOR  
CROSS TEXAS TRANSMISSION, LLC**

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**SOAH Docket No. 473-10-4106  
PUC Docket No. 37956**

**Mulvey - Rebuttal  
Cross Texas Transmission, LLC  
Gray – Tesla CCN**

1                   **REBUTTAL TESTIMONY OF DOUGLAS L. MULVEY**

2                   **I.     PURPOSE OF REBUTTAL TESTIMONY**

3    Q.    ARE YOU THE SAME DOUGLAS L. MULVEY WHO PRESENTED  
4           DIRECT TESTIMONY ON BEHALF OF CROSS TEXAS TRANSMISSION,  
5           LLC ("CTT" OR "COMPANY") IN THIS DOCKET?

6    A.    Yes.

7    Q.    HAVE YOU REVIEWED THE TESTIMONY FILED BY AND ON BEHALF  
8           OF INTERVENORS, THE TESTIMONY FILED BY PUBLIC UTILITY  
9           COMMISSION OF TEXAS STAFF ("STAFF"), AND THE COMMENT  
10          LETTER SUBMITTED BY THE TEXAS PARKS AND WILDLIFE  
11          DEPARTMENT ("TPWD") ON JUNE 25, 2010 IN THIS DOCKET?

12   A.    Yes.

13   Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

14   A.    The purpose of my rebuttal testimony is to respond to certain aspects of the  
15          testimony filed by, and on behalf of, various intervenors regarding the  
16          proposed Gray – Tesla 345 kV Transmission Line Project ("Proposed  
17          Transmission Line Project"). I will respond to testimony regarding  
18          (1) suggested modifications to the Company's routes as currently  
19          delineated, (2) certain restrictions on property use after the transmission  
20          line is constructed, (3) one allegation made by a specific intervenor  
21          concerning CTT's conduct during the data collection phase of this project,  
22          and (4) certain recommendations of the TPWD filed on June 25, 2010, in  
23          this docket (the "TPWD Comment Letter").

24           **II.    RESPONSE TO PROPOSED ROUTE MODIFICATIONS**

25   Q.    SEVERAL INDIVIDUALS, INCLUDING GEORGE CHAPMAN (P. 9, LINE 3  
26          TO P. 11, LINE 17), S. GENE HALL (P. 2), KADE MATTHEWS (PP. 7-8),  
27          TOM BLACKWELL (PP. 5-6), AND SAMANN WATKINS HAVE  
28          INFORMALLY OR FORMALLY COMMUNICATED POTENTIAL  
29          MODIFICATIONS TO EXISTING ROUTE LINKS FOR THE COMPANY'S

1           CONSIDERATION SINCE THE APPLICATION WAS FILED. WHAT IS  
2           CTT'S RESPONSE TO THESE PROPOSED MODIFICATIONS?

3    A.   First and foremost, CTT is committed to working with all landowners to  
4           lessen the impact of a transmission line should a route be approved across  
5           their respective parcels. Consultation with landowners is not only standard  
6           practice, but is typically required by the Commission ordering language  
7           when approving applications for Certificates of Convenience and Necessity  
8           ("CCNs"). As part of the standard Commission CCN order, utilities are  
9           required to cooperate with directly affected landowners to implement minor  
10          deviations in the approved route to minimize the impact of the transmission  
11          line on the landowner's property. In his Direct Testimony (p. 14, lines 13-  
12          17), Staff witness, Mr. Michael Lee, recommends that the Commission  
13          incorporate this requirement into its Final Order should the Commission  
14          approve CTT's application.

15               As to the specific modifications proposed by the aforementioned  
16          landowners, CTT is willing to investigate all of them during the easement  
17          acquisition phase of the project. While no on-the-ground investigations  
18          have been conducted, and the project is still in the certification phase, CTT  
19          has initially reviewed all of the proposed alignments. Currently, CTT does  
20          not view the proposed modifications of Mr. Hall, Mr. Blackwell, Mr.  
21          Matthews or Ms. Watkins to be unworkable from a construction or  
22          engineering standpoint. The modifications proposed by Mr. Chapman are  
23          not feasible from a construction standpoint.

24    Q.   PLEASE DESCRIBE THE MODIFICATION PROPOSED BY MR. HALL.

25    A.   Mr. Hall proposes that CTT's Link P parallel his east property boundary  
26           instead of paralleling a pipeline.

27    Q.   PLEASE DESCRIBE THE MODIFICATION PROPOSED BY MR.  
28           BLACKWELL AND MR. MATTHEWS.

- 1 A. Messrs. Blackwell and Matthews propose that CTT's Link K be moved  
2 approximately one (1) mile to the east to parallel their east property  
3 boundary.
- 4 Q. PLEASE DESCRIBE THE MODIFICATION PROPOSED BY MS.  
5 WATKINS.
- 6 A. Ms. Watkins proposes that CTT's Link MM be moved approximately 1,500  
7 feet east to mitigate impacts to her property.
- 8 Q. PLEASE DESCRIBE THE MODIFICATIONS PROPOSED BY MR.  
9 CHAPMAN.
- 10 A. Mr. Chapman proposes that a portion of Link J follow Ranch Road 2473  
11 and the existing 230 kV transmission line and associated right-of-way to  
12 Ranch Road 1443 before heading due south along Ranch Road 1443  
13 before tying into Links O and P. This modification is not feasible due to the  
14 existence of physical constraints, including a habitable structure, which  
15 would be in the transmission line right-of-way along the proposed  
16 alignment.
- 17 Mr. Chapman also proposes that a portion of Link R continue to  
18 follow an existing 115 kV transmission line and Ranch Road 173 or go  
19 further south in one location to ultimately parallel Farm to Market Road  
20 3143. These modifications are not feasible due to the existence of  
21 habitable structures and other existing physical constraints that would be in  
22 the right-of-way of the transmission line.

23 **III. RESPONSE TO ALLEGATIONS REGARDING PROPERTY USE**  
24 **RESTRICTIONS**

- 25 Q. SEVERAL INDIVIDUALS, INCLUDING AL ALLRED (P. 5) AND MR.  
26 CHAPMAN (P. 6, LINES 17 TO 19 AND P. 9, LINES 3-24) EXPRESS  
27 CONCERNS REGARDING THE EFFECTS OF TRANSMISSION LINE  
28 CONSTRUCTION AND OPERATION IN THE IMMEDIATE VICINITY OF  
29 THEIR PLANNED OR EXISTING CENTER PIVOT IRRIGATION

1       SYSTEMS. WHAT IS CTT'S POSITION WITH REGARD TO THIS  
2       CONCERN?

3       A. Initially, CTT attempts to avoid routing its lines over center pivot irrigation  
4       systems. The Company attempted to do just that on Mr. Allred's and Mr.  
5       Chapman's property. In fact, as set forth on Figures 3-2, 3-2A, 3-2B, and 3-  
6       2C of the Environmental Assessment and Routing Study (Attachment A to  
7       the Application) and Attachment J to the Application, Sheets 1 through 24, it  
8       is not apparent that the routes as proposed will impact any existing center  
9       pivot irrigation on the parcels owned by Mr. Allred or Mr. Chapman. For  
10      those locations where CTT's proposed alternative routes do cross center  
11      pivot irrigation systems, CTT intends to span these systems to avoid  
12      operational impacts.

13               Nevertheless, as stated in Section II of my rebuttal testimony, CTT  
14      will work with landowners in an effort to minimize the impacts of new  
15      transmission line on respective landowners' property and would do so with  
16      Mr. Allred and Mr. Chapman in these instances. In coordination with  
17      landowners, minor route modifications can be made to lessen the impact to  
18      property. In addition, if other measures are necessary to mitigate  
19      transmission line impacts, such as impacts to center pivot irrigation  
20      equipment operation, CTT will address those issues during the easement  
21      acquisition phase of the project and will remedy the issues if reasonably  
22      possible.

23      Q. SEVERAL INDIVIDUALS, INCLUDING MR. ALLRED (PP. 4 AND 6) AND  
24      JOHN JAY O'BRIEN (P. 3) EXPRESS CONCERNS REGARDING THE  
25      EFFECTS OF THE PRESENCE OF A TRANSMISSION LINE IN AREAS  
26      WHERE AERIAL BRUSH AND PEST CONTROL ACTIVITIES ARE  
27      CONDUCTED. WHAT IS CTT'S POSITION WITH REGARD TO THIS  
28      CONCERN?

29      A. The presence of a transmission line on property will not prevent landowners  
30      from conducting brush and animal control activities from helicopters or

1 airplanes. While flight paths may have to change to a small degree, these  
2 activities will not be restricted by the presence of a transmission line. My  
3 experience has been that pilots who conduct such services for landowners  
4 have more than enough skill to maneuver aircraft in very close proximity to  
5 overhead electric distribution and transmission lines. In fact, on multiple  
6 occasions, I have witnessed these activities being conducted in very close  
7 proximity to overhead lines in the study area.

8 Q. MR. ALLRED (P. 5) EXPRESSES A CONCERN THAT THE WINDMILLS  
9 ON HIS PROPERTY WILL NOT BE ABLE TO OPERATE SHOULD A  
10 TRANSMISSION LINE BE LOCATED IN CLOSE PROXIMITY TO THEIR  
11 LOCATION. WHAT IS CTT'S POSITION WITH REGARD TO THIS  
12 CONCERN?

13 A. Based on my reconnaissance of Mr. Allred's property, I am unaware of any  
14 windmills that are located within the proposed transmission line right-of-  
15 way. However, as stated in Section II of my rebuttal testimony, CTT will  
16 work with landowners in an effort to minimize the impacts of new  
17 transmission line on respective landowners' property and will do so with Mr.  
18 Allred in this instance. In coordination with landowners, minor route  
19 modifications can be made to lessen the impact to property. In addition, if  
20 other measures are necessary to mitigate transmission line impacts, such  
21 as impacts to windmill operation, CTT will address those issues during the  
22 easement acquisition phase of the project and will remedy the issues if  
23 reasonably possible and practicable. The only restriction CTT will place on  
24 operation of a windmill on landowner property is that the windmill may not  
25 be located and/or operated within the right-of-way of the transmission line.

26 **IV. RESPONSE TO ALLEGATIONS REGARDING COMPANY CONDUCT**

27 Q. ON PAGE 10 OF KENNETH FIELDS' DIRECT TESTIMONY (ON BEHALF  
28 OF BOTH THE FIELDS AND RAMSDELL FAMILY LIMITED  
29 PARTNERSHIPS), HE STATES THAT CTT MISLED THE GENERAL

1 PUBLIC OF ITS TRUE INTENTIONS. WHAT IS CTT'S POSITION WITH  
2 REGARD TO THIS STATEMENT?

3 A. While Mr. Fields is entitled to his opinion, his statement could not be farther  
4 from the truth. There are three primary items I must address to respond, all  
5 of which have to do with the process by which data was collected and  
6 routes were reviewed and proposed by the Company.

7 First, Mr. Fields appears concerned with the efforts made by CTT to  
8 assess environmental impacts on his property. What Mr. Fields fails to  
9 recognize is that CTT undertook a comprehensive environmental  
10 assessment and routing study in support of its Application in his docket as  
11 demonstrated by Attachment A to the Company's Application, the  
12 *Environmental Assessment and Alternative Route Analysis on the Gray to*  
13 *Tesla 345 kV Transmission Line Project for Childress, Collingsworth, Cottle,*  
14 *Donley, Foard, Gray, Hall, Hardeman, and Wheeler Counties, Texas*  
15 *("Environmental Assessment and Routing Study")*. The Environmental  
16 Assessment and Routing Study was prepared by a team of professionals at  
17 Burns & McDonnell and led by Mr. Mark A. Van Dyne, one of the  
18 preeminent consultants in the field and the only expert who has presented  
19 testimony in this docket who has experience in developing environmental  
20 assessments of this type. This type of environmental assessment as well  
21 as the other documentation presented in the Application has been routinely  
22 relied on by the Commission in approving a significant number of CCN  
23 cases over the last five to ten years. The methodologies used by CTT and  
24 Burns & McDonnell are industry standard for transmission service providers  
25 in Texas.

26 Second, Mr. Fields also does not recognize the efforts made by the  
27 Company that are above and beyond what is called for in Commission  
28 Procedural Rule 22.52. As detailed in the Company's Response to  
29 Question No. 16 in the Application, CTT undertook a more robust public  
30 involvement process than is called for in the Commission's rule. For

1 example, CTT conducted significant outreach through but not limited to: two  
2 (2) introductory Open Houses in June 2009 (in Pampa and Memphis) n;  
3 one or more meetings with the judges and/or Commissioners of Gray,  
4 Wheeler, Donley, Collingsworth, Hall, Childress, and Hardeman Counties;;  
5 and three (3) public open house meetings, one in Childress, one in  
6 Wellington, and one in McLean, all of which were noticed in multiple  
7 newspapers of general circulation in the study area and advertised on local  
8 radio spots. In addition, as the project progressed and potentially impacted  
9 landowners were identified and noticed, CTT followed up with in excess of  
10 50 landowners through telephone calls, meetings, mail correspondence and  
11 email correspondence. Additionally, many local residents have either call  
12 or visited the Company's Pampa office where information has been  
13 routinely disseminated and various input was received. It is noted that  
14 Commission Procedural Rule only requires CTT to have one (1) public  
15 meeting prior to filing its CCN application and no notice of the public  
16 meeting is required to be published in a newspaper of general circulation in  
17 the study area. It is clear that CTT has gone far above and beyond this  
18 requirement and CTT will continue its significant public outreach.

19 Third, Mr. Fields appears to misunderstand one other aspect of both  
20 CTT's and Burns & McDonnell's methodologies. Apparently, Mr. Fields  
21 does not understand that CTT and Burns & McDonnell have to develop and  
22 review routes in their entirety. Mr. Fields appears to be more focused on  
23 the impacts to the route links that cross his property rather than route links  
24 upstream and downstream of his property, or the impacts along the entirety  
25 of the routes some of which are over 110 miles long. I am not saying Mr.  
26 Fields' opinion as a landowner in this case should be based on anything  
27 except the impacts to his personal property if that is how he so chooses to  
28 address his concerns. The problem with his logic and the primary  
29 difference between what Mr. Fields is concerned with and what the  
30 Company must do in support of its Application is that the Company has a

1 responsibility under Section 37.056 of the Texas Utilities Code and  
2 Commission Substantive Rule 25.101 to look at the routes not only on a  
3 micro level, but on a macro level. CTT must assess and present  
4 information to the Commission regarding overall impacts of the Proposed  
5 Transmission Line Project impacts and must select routes that comply with  
6 applicable statute and regulations. As a result, impacts to specific parcels  
7 of property may be different along the entire length of a specific route.

8 **V. PERMITTING ACTIVITIES AND RESPONSE TO RECOMMENDATIONS**

9 Q. WHAT IS YOUR EXPERIENCE WITH REGARD TO PERMITTING  
10 EFFORTS SIMILAR TO THOSE THAT CTT WILL BE REQUIRED TO  
11 UNDERTAKE TO CONSTRUCT THE PROPOSED TRANSMISSION LINE  
12 PROJECT?

13 A. Over the course of my career as detailed in Exhibit DLM-1 to my Direct  
14 Testimony, I have managed and performed permitting and/or due diligence  
15 for a number of generation and transmission projects and other linear  
16 facilities in more than twenty (20) states and a few foreign locations. For  
17 example, I have directly performed or managed the following:  
18 environmental assessments; wetlands delineation, permitting, and/or  
19 mitigation with the U.S. Army Corps of Engineers and state agencies;  
20 habitat and presence/absence surveys, consultation, and mitigation with the  
21 United States Fish and Wildlife Service ("USFWS") pursuant to the  
22 Endangered Species Act ("ESA"), which protects threatened and  
23 endangered species as well as their critical habitat; Section 106  
24 consultation with appropriate state agencies with respect to historic  
25 properties including investigations, mitigation, and/or recovery; and a  
26 number of other local, state, or federal permits.

27 Q. THE TPWD COMMENT LETTER CONTAINS VARIOUS COMMENTS  
28 REGARDING COMPLIANCE WITH ENVIRONMENTAL REGULATIONS.  
29 WHAT IS CTT'S POSITION WITH REGARD TO COMPLIANCE WITH  
30 ENVIRONMENTAL REGULATIONS?

- 1 A. CTT takes regulatory compliance very seriously and will diligently attempt  
2 to comply fully with all applicable environmental regulations. If CTT  
3 identifies that it has committed a violation of an environmental regulation,  
4 the Company's standard practice will be to self-report the violation to the  
5 appropriate regulatory authority.
- 6 Q. DOES CTT HAVE ANY COMMENTS REGARDING THE TPWD  
7 COMMENT LETTER?
- 8 A. Yes. While CTT understands and respects TPWD's mission to protect the  
9 State's parks and wildlife for the citizens of Texas, many of the  
10 recommendations made in the TPWD comment letter are already part of  
11 the post-certification construction process that will be employed by the  
12 Company and the other recommendations are either not necessary, not  
13 operationally practical, or do not take into consideration all elements of  
14 PURA § 37.056 and Commission Substantive Rule 25.101.
- 15 Q. THE TPWD COMMENT LETTER CONTAINS VARIOUS  
16 RECOMMENDATIONS REGARDING COORDINATION WITH  
17 REGULATORY AUTHORITIES WHEN CONSTRUCTING NEW  
18 TRANSMISSION LINES, INCLUDING TPWD. DOES THE COMMISSION  
19 EVER ORDER COMPANIES LIKE CTT TO COMPLY WITH  
20 ENVIRONMENTAL LAWS AND REGULATIONS OR COORDINATE WITH  
21 REGULATORY AUTHORITIES WHEN CONSTRUCTING NEW  
22 TRANSMISSION LINES?
- 23 A. CTT is obligated to comply with all environmental laws and regulations  
24 independent of any language included by the Commission in an order.  
25 However, as part of the typical order approving a CCN or CCN amendment,  
26 the Commission specifically orders utilities to coordinate certain activities  
27 with appropriate agencies and take into consideration certain environmental  
28 policies when undertaking construction of the transmission line. For  
29 example, in the final order in Docket No. 37407, the Commission stated the  
30 following: "Oncor shall follow the procedures outlined in the following

1 publication for protecting raptors: *Suggested Practices for Raptor*  
2 *Protection on Power Lines, The State of the Art in 2006*, Avian Power Line  
3 Interaction Committee, 2006 and the *Avian Protection Plan Guidelines*  
4 published by APLIC in April 2005." Staff witness Mr. Lee recommends  
5 similar language in his testimony on page 13, lines 20 through 23. An  
6 example of ordering paragraphs typically included in Commission CCN  
7 orders is attached to my testimony as Exhibit DLM-R-1.

8 **A. RARE AND PROTECTED SPECIES**

9 Q. THE TPWD COMMENT LETTER CONTAINS VARIOUS  
10 RECOMMENDATIONS REGARDING ENVIRONMENTAL ASSESSMENTS  
11 AND PERMITTING. SEVERAL INDIVIDUALS, INCLUDING MS. MELISSA  
12 COOKE (PP. 2-3 AND 7-9), MR. FIELDS (ON BEHALF OF BOTH THE  
13 FIELDS AND RAMSDELL FAMILY LIMITED PARTNERSHIPS) (PP. 2, 8,  
14 AND 10), AND MR. O'BRIEN (P. 3) EXPRESS CONCERN REGARDING  
15 THE EFFECTS OF THE PRESENCE OF A TRANSMISSION LINE ON  
16 SPECIES THAT ARE CANDIDATES FOR OR ARE LISTED ON THE ESA  
17 THREATENED AND ENDANGERED SPECIES LIST. PLEASE  
18 DESCRIBE THE ENVIRONMENTAL-RELATED PERMITTING ACTIVITIES  
19 CTT WILL UNDERTAKE TO CONSTRUCT THE PROPOSED  
20 TRANSMISSION LINE PROJECT.

21 A. In addition to obtaining a CCN, CTT may need additional permits and may  
22 be required to make additional notifications in order to construct the  
23 Proposed Transmission Line Project. After a transmission line route has  
24 been selected and approved by the Commission, qualified individuals will  
25 conduct a field assessment of the entire length of the project to identify  
26 water resources, cultural resources, potential migratory bird issues and  
27 threatened/endangered species habitat that may be impacted as a result of  
28 the transmission line project. Preliminary siting of storm water controls are  
29 identified during this process and the Company will develop a Storm Water  
30 Pollution Prevention Plan as also discussed in my Direct Testimony and in

1 the Rebuttal Testimony of Mr. Terry L. Arndt. As a result of these  
2 assessments, the Company will identify additional permits that are  
3 necessary, will obtain all necessary environmental permits, and will comply  
4 with the relevant permit conditions during construction and operation of the  
5 transmission line. The individuals who will oversee these activities at CTT  
6 have implemented these processes successfully over many years and in  
7 numerous projects. These processes are considered standard practice in  
8 the industry.

9 Q. ON PAGE 3 OF THE TPWD COMMENT LETTER, THE TPWD  
10 RECOMMENDS THAT CTT ASSESS THE SUITABILITY OF HABITAT  
11 FOR THE FEDERALLY LISTED INTERIOR LEAST TERN ("ILT") ONCE A  
12 ROUTE IS SELECTED BY THE COMMISSION. WHAT IS THE  
13 COMPANY'S RESPONSE TO THIS RECOMMENDATION?

14 A. CTT will comply with all applicable federal laws, including the ESA. The  
15 Company will comply with this recommendation as it pertains to the right-of-  
16 way along the route selected by the Commission and will consult with the  
17 USFWS should such consultation be necessary.

18 Q. ON PAGE 6 OF THE TPWD COMMENT LETTER, THE TPWD  
19 RECOMMENDS THAT CTT LOCATE THE GRAY SUBSTATION OUTSIDE  
20 OF THE ESTIMATED OCCUPIED RANGE ("EOR") OF THE LESSER  
21 PRAIRIE CHICKEN ("LPC"). WHAT IS THE COMPANY'S RESPONSE TO  
22 THIS RECOMMENDATION?

23 A. Moving the Gray Substation site to avoid the EOR of the LPC is not  
24 practical. As detailed in my Direct Testimony, CTT selected the Gray  
25 Substation location based on a number of factors including: (1) the  
26 approximate location identified in Scenario 2 of the CREZ Transmission  
27 Optimization Study (Figure 5); (2) the availability of adequate buildable  
28 land; (3) the availability of quality road access to the site; (4) the avoidance  
29 of oil and gas facilities; (5) the proximity to existing and proposed wind  
30 generation facilities; (6) the locations of numerous playa lakes; and (7) the

- 1 availability of a willing seller of land at reasonable terms. While CTT  
2 understands the position of TPWD with regard to preservation of LPC  
3 habitat, CTT had other considerations that weighed into the decision to site  
4 the Gray Substation where it is currently located, which is on a parcel of  
5 property the Company currently has an option to purchase. To note, the  
6 Company did undertake an environmental assessment of the Gray  
7 Substation site location, which included a presence/absence survey for  
8 federally listed endangered and threatened species.
- 9 Q. ON PAGE 7 OF THE TPWD COMMENT LETTER, THE TPWD  
10 RECOMMENDS THAT IF THE GRAY SUBSTATION SITE CANNOT BE  
11 RELOCATED THEN THE COMMISSION APPROVE THE PROPOSED  
12 TRANSMISSION LINE ROUTE USING ROUTE 38. WHAT IS THE  
13 COMPANY'S RESPONSE TO THIS RECOMMENDATION?
- 14 A. Route 38 was not proposed by the Company in this docket. While Route 38  
15 was not formally proposed by CTT, the Environmental Assessment and  
16 Routing Study (Attachment A to the Application) does include data on the  
17 route and as set forth in the Direct Testimony of Mr. Van Dyne, it was routed  
18 in compliance with Section 37.056 of the Texas Utilities Code and  
19 Commission Substantive Rule 25.101.
- 20 Q. ON PAGE 8 OF THE TPWD COMMENT LETTER, THE TPWD  
21 RECOMMENDS THAT IF THE GRAY SUBSTATION SITE CANNOT BE  
22 RELOCATED THEN COMPENSATORY MITIGATION FOR DIRECT AND  
23 INDIRECT IMPACTS TO THE LPC BE IMPLEMENTED. WHAT IS THE  
24 COMPANY'S RESPONSE TO THIS RECOMMENDATION?
- 25 A. CTT intends to comply with all applicable regulatory requirements in  
26 constructing the Proposed Transmission Line Project. The Company will  
27 expend the necessary resources to survey for and/or monitor impacts to  
28 federally-listed threatened and endangered species during construction.  
29 Specifically, CTT will utilize permitted biological monitors to ensure  
30 compliance with the ESA and other applicable regulatory requirements.

1 Although CTT is not currently required to use this biological monitor for  
2 identification of the LPC, CTT will, if required by the Commission, expend  
3 the resources necessary to monitor for the LPC during clearing and  
4 construction activities for the transmission line project. As noted in my  
5 Direct Testimony, CTT has already begun discussions with the USFWS  
6 and the TPWD regarding potential mitigation measures for potential  
7 impacts to LPC habitat in the immediate vicinity of the Proposed  
8 Transmission Line Project.

9 Q. ON PAGES 10 AND 11 OF THE TPWD COMMENT LETTER, THE TPWD  
10 MAKES A RECOMMENDATION THAT WOULD REQUIRE CTT TO HAVE  
11 THE EQUIVALENT OF A PERMITTED BIOLOGICAL MONITOR ON-SITE  
12 DURING CONSTRUCTION OF THE PROPOSED TRANSMISSION LINE  
13 PROJECT TO AVOID HARM TO STATE LISTED SPECIES SUCH AS THE  
14 TEXAS KANGAROO RAT AND THE TEXAS HORNED LIZARD. WHAT IS  
15 THE COMPANY'S RESPONSE TO THIS RECOMMENDATION?

16 A. As stated previously, CTT will utilize permitted biological monitors to ensure  
17 compliance with the ESA and other applicable regulatory requirements.  
18 Although utilities in Texas are not currently required to use this biological  
19 monitor for identification of state-listed species, CTT will, if required by the  
20 Commission, expend the resources necessary to monitor for the species of  
21 concern to the TPWD during clearing and construction activities for the  
22 Proposed Transmission Line Project. The Commission has not ordered  
23 other utilities to expend these resources in several prior CREZ CCN cases.

24 Q. ON PAGES 9 AND 10 OF THE TPWD COMMENT LETTER, THE TPWD  
25 RECOMMENDS THAT CERTAIN MEASURES SHOULD BE TAKEN TO  
26 ENSURE COMPLIANCE WITH THE MIGRATORY BIRD TREATY ACT.  
27 WHAT IS CTT'S RESPONSE TO THIS RECOMMENDATION?

28 A. CTT will undertake measures necessary to comply with the Migratory Bird  
29 Treaty Act ("MBTA"). The MBTA is no different than any other law with  
30 which the Company must comply. In the TPWD Comment Letter, TWPD

1 recommends the Commission order CTT to institute certain practices to  
2 ensure compliance with the MBTA. It is unclear at this time whether the  
3 practices recommended will be necessary or practical given the route has  
4 not been selected by the Commission. CTT may employ certain practices  
5 described by the TPWD, but will apply them on a case-by-case basis within  
6 the right-of-way if those practices are necessary to ensure compliance with  
7 the MBTA. As noted by TPWD, the Commission has not instituted an  
8 absolute ban on construction activities during the general bird nesting  
9 season as recommended by TPWD in several previous CREZ CCN cases.

10 **B. STAFF TESTIMONY**

11 Q. ON PAGES 12 THROUGH 14 OF STAFF WITNESS MR. LEE'S DIRECT  
12 TESTIMONY IN THIS DOCKET, HE RELATES STAFF'S VIEWS OF  
13 TPWD'S RECOMMENDATIONS. WHAT IS THE COMPANY'S  
14 RESPONSE TO THAT TESTIMONY?

15 A. CTT agrees with Mr. Lee's testimony as it relates to responding to the  
16 TPWD recommendations. Mr. Lee testifies on page 12 of his testimony  
17 that the standard mitigation measures (found on pages 13-14 of his  
18 testimony) be included in the order for this CCN application to address the  
19 concerns raised by TPWD. Mr. Lee also testifies on page 13 of his  
20 testimony that CTT has the resources and the procedures in place for  
21 accommodating the recommendations and comments provided by TPWD.  
22 As explained previously in my testimony, CTT will, if required by the  
23 Commission, comply with any measures designed to mitigate the impact of  
24 the Proposed Transmission Line Project on sensitive animal species and  
25 their habitats as well as minimizing the amount of flora and fauna disturbed  
26 during construction of the transmission line. The standard mitigation  
27 requirements described by Mr. Lee in his testimony coupled with the  
28 practices CTT will employ to construct, maintain, and operate the Proposed  
29 Transmission Line Project are reasonable measures for a utility to  
30 undertake when constructing a transmission line.

1     **C.     COMMISSION'S ORDER OF REFERRAL AND PRELIMINARY ORDER**

2     Q.     HAVE YOU REVIEWED THE COMMISSION'S ORDER OF REFERRAL  
3             AND PRELIMINARY ORDER ("ORDER OF REFERRAL") FILED IN THIS  
4             DOCKET ON MAY 5, 2010?

5     A.     Yes, I have.

6     Q.     WHAT IS YOUR UNDERSTANDING OF WHAT THAT ORDER  
7             PROVIDES?

8     A.     My understanding of the Order of Referral is that the Commission required  
9             a list of issues that need to be addressed in this docket, one of which is to  
10            address recommendations made by the TPWD, if the TPWD filed  
11            comments in the docket. This requirement was necessitated by an  
12            amendment to the Texas Parks and Wildlife Code, which required that an  
13            agency with statewide jurisdiction provide a written response to each  
14            recommendation or informal comment made by TPWD on or after  
15            September 1, 2009. Specifically, the Order of Referral (p. 6) provides that  
16            the following issues be addressed in this docket:

- 17            (a) What modifications, if any, should be made to the proposed project as a  
18               result of the recommendations or comments?  
19            (b) What conditions or limitations, if any, should be included in the final  
20               order in this docket as a result of any recommendations or comments?  
21            (c) What other disposition, if any, should be made of any recommendations  
22               or comments?  
23            (d) If any recommendation or comment should not be incorporated in this  
24               project or the final order, or should not be acted upon, or is otherwise  
25               inappropriate or incorrect in light of the specific facts and circumstances  
26               presented by this application or the law applicable to contested cases,  
27               please explain why that is the case.

28            TPWD filed comments in this docket on June 25, 2010.

29     Q.     WHAT IS CTT'S RESPONSE TO THE FIRST ISSUE IDENTIFIED IN THE  
30             ORDER OF REFERRAL – "WHAT MODIFICATIONS, IF ANY, SHOULD

1 BE MADE TO THE PROPOSED PROJECT AS A RESULT OF THE TPWD  
2 RECOMMENDATIONS OR COMMENTS?"

3 A. No modifications should be made in response to the comments included in  
4 the TPWD Comment Letter. CTT agrees with the TPWD recommendation  
5 on page 3 of the TPWD Comment Letter that CTT make a determination of  
6 the suitability of habitat for the ILT, once a route is selected. CTT will utilize  
7 best management practices to minimize the potential impact to the ILT.

8 With respect to TPWD's recommendation on pages 6-8 of the TPWD  
9 Comment Letter regarding mitigation of impacts to the LPC, CTT does not  
10 agree that the location of the Gray Substation should be outside of the EOR  
11 for the LPC. The Gray Substation site is located where it is for a variety of  
12 both operational and regulatory purposes and movement of the location at  
13 this point in time is not practical given the date this facility is required to be  
14 operational. CTT will, if required by the Commission, expend the resources  
15 necessary to survey for the LPC along the right-of-way before construction  
16 of the Proposed Transmission Line Project and provide compensatory  
17 mitigation.

18 With respect to TPWD's recommendation on pages 10-11 of the  
19 TPWD Comment Letter regarding the equivalent of the presence of  
20 biological monitors during clearing and construction activities within habitat  
21 for the Texas Kangaroo Rat and the Texas Horned Lizard, CTT will, if  
22 required by the Commission, expend the resources necessary to monitor  
23 for these state-listed species during clearing and construction activities for  
24 the Proposed Transmission Line Project.

25 With respect to TPWD's recommendation on pages 9-10 of the  
26 TPWD Comment Letter regarding measures that should be employed to  
27 comply with the MBTA, CTT agrees in part and disagrees in part. CTT  
28 agrees that measures must be undertaken to comply with the MBTA and  
29 the Company will employ such measures. While certain measures  
30 described in the TPWD Comment Letter may be applicable to one or more

- 1 of the proposed routes, certain measures may not be necessary given the  
2 specific attributes of any particular route. CTT will comply with the MBTA,  
3 but does not believe blanket compliance measures are either warranted or  
4 appropriate.
- 5 Q. WHAT IS CTT'S RESPONSE TO THE SECOND ISSUE IDENTIFIED IN  
6 THE ORDER OF REFERRAL – "WHAT CONDITIONS OR LIMITATIONS,  
7 IF ANY, SHOULD BE INCLUDED IN THE FINAL ORDER IN THIS  
8 DOCKET AS A RESULT OF ANY RECOMMENDATIONS OR  
9 COMMENTS?"
- 10 A. The mitigation measures included on pages 13 and 14 of Mr. Lee's  
11 testimony should be included in the Commission's final order in this docket.
- 12 Q. WHAT IS CTT'S RESPONSE TO THE THIRD ISSUE IDENTIFIED IN THE  
13 ORDER OF REFERRAL – "WHAT OTHER DISPOSITION, IF ANY,  
14 SHOULD BE MADE OF ANY RECOMMENDATIONS OR COMMENTS?"
- 15 A. With respect to the TPWD recommendations discussed above that CTT  
16 does not concur with, the Company submits that those recommendations or  
17 comments be found not necessary for the issuance of final order in this  
18 docket.
- 19 Q. WHAT IS CTT'S RESPONSE TO THE LAST ISSUE IDENTIFIED BY THE  
20 COMMISSION IN THE ORDER OF REFERRAL?
- 21 A. For the reasons discussed previously in my Rebuttal Testimony, CTT does  
22 not believe the TPWD's recommendations should be incorporated in the  
23 final order in this docket. The standard mitigation requirements described  
24 by Mr. Lee in his testimony coupled with the practices that will be employed  
25 by CTT are reasonable measures for a utility to undertake when  
26 constructing a transmission line.
- 27 Q. PLEASE SUMMARIZE CTT'S RESPONSE TO THE TPWD COMMENT  
28 LETTER.
- 29 A. As previously stated, CTT understands and respects TPWD's mission to  
30 protect the State's parks and wildlife for the citizens of Texas and will

1 incorporate applicable TPWD recommendations into its post-certification  
2 construction process. Notwithstanding, many of the additional  
3 recommendations included in the TPWD Comment Letter are not necessary  
4 or are not operationally practical.

5 **VI. CONCLUSION**

6 Q. WHAT EFFECT, IF ANY, DOES THE TESTIMONY FILED BY  
7 INTERVENORS AND STAFF HAVE ON YOUR DESIGNATION OF  
8 ROUTE 194 AS THE PREFERRED ROUTE?

9 A. Route 194 is still CTT's Preferred Route despite the testimony provided by  
10 the intervenors and Staff in this case. Notwithstanding, Route 314 is an  
11 option that should also be strongly considered by the Commission. Not  
12 only does Route 314 have the potential to mitigate impacts to LPC habitat,  
13 which appears to be an important value to the surrounding community, but  
14 the majority of intervenors who would be impacted by Route 314 have been  
15 extremely receptive to working with CTT since the Application was filed to  
16 come up with solutions that would help mitigate impacts on property. The  
17 Company recognizes that a new transmission line will impact certain  
18 landowners, but strong consideration should be given to affected  
19 landowners' preferences when they are willing to provide a workable,  
20 reasonable solution and accept a new transmission line on their property.

21 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

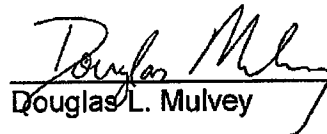
22 A. Yes.

**AFFIDAVIT**

**STATE OF MISSOURI   §  
                                  §  
COUNTY OF ST. LOUIS §**

**BEFORE ME**, the undersigned authority, on this day personally appeared Douglas L. Mulvey who, having been placed under oath by me, did depose as follows:

My name is Douglas L. Mulvey. I am of legal age and a resident of the State of Missouri. The foregoing testimony and exhibit offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.

  
Douglas L. Mulvey

**SUBSCRIBED AND SWORN TO BEFORE ME** by the said Douglas L. Mulvey this 27 day of July, 2010.

  
Notary Public, State of Missouri

My Commission Expires

May 19, 2014



PUC DOCKET NO. 37407  
SOAH DOCKET NO. 473-10-0399

APPLICATION OF ONCOR ELECTRIC §  
DELIVERY COMPANY, L.L.C., TO §  
AMEND ITS CERTIFICATE OF §  
CONVENIENCE AND NECESSITY FOR §  
THE TONKAWA - SWEETWATER §  
EAST - CENTRAL BLUFF CREZ §  
345 KV TRANSMISSION LINE IN §  
SCURRY, MITCHELL, FISHER, §  
NOLAN AND TAYLOR COUNTIES, §  
TEXAS §

PUBLIC UTILITY COMMISSION  
OF TEXAS

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ORDER

This Order addresses the application of Oncor Electric Delivery Company, LLC to amend its certificate of convenience and necessity (CCN) to include two Competitive Renewable Energy Zone (CREZ) priority projects: the Tonkawa to Sweetwater East double-circuit, 345-kV line and the Sweetwater East to Central Bluff double-circuit, 345-kV line. The Tonkawa to Sweetwater East transmission line extends from Oncor's existing Tonkawa switching station, located in the southeastern portion of Scurry County, to the new Oncor Sweetwater East switching station located east of Sweetwater, Texas in Nolan County. The second transmission line extends from the Sweetwater East switching station to the new Oncor Central Bluff switching station located in southeast Nolan County.

On February 12, 2010, the State Office of Administrative Hearings' (SOAH) administrative law judge (ALJ) issued a proposal for decision in which the judge recommended granting Oncor's application. The ALJ recommended that the Commission adopt Oncor's preferred Tonkawa to Sweetwater East route (TO-SE5) because it is the least expensive and was not contested by any intervenors. Furthermore, the ALJ recommended that the Commission adopt Staff's recommended alternate route (SE-CB14) for the Sweetwater East to Central Bluff portion of the line. The ALJ reasoned that route SE-CB14 is the shortest in length and the least costly of the proposed Sweetwater East to Central Bluff routes. The Commission adopts in part

route (SE-CB15), taking into consideration the factors set out in PURA §37.056 and P.U.C. SUBST. R. 25.101.

8. Oncor's preferred Tonkawa route (TO-SE5) and Oncor's alternate Central Bluff route (SE-CB15) comply with all aspects of PURA §37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
9. The project, as a CREZ transmission project identified in Docket Nos. 33672 and 35665, is exempt under PURA §§39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement of proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.
10. The project is consistent with and in furtherance of the goals and mandates of Section 39.904 of PURA.
11. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient under PURA §39.904(g)(3) to grant Oncor's application for a CCN in this docket.

### III. Ordering Paragraphs

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

1. Oncor's CCN No. 30158 is amended and Oncor's application to build two new 345-kV double-circuit transmission lines that extend from Oncor's existing Tonkawa Switching Station to the new Oncor Sweetwater East Switching Station and from the Sweetwater East Switching Station to the new Oncor Central Bluff Switching Station, respectively, is approved. The project will follow the routes described as route TO-SE5 for the Tonkawa to Sweetwater East portion of the project and route SE-CB15 for the Sweetwater East to Central Bluff portion of the project.
2. Oncor shall implement erosion control measures as appropriate and return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowners or landowners' representatives.
3. In the event Oncor or its contractors encounter any archaeological artifacts or other cultural resources during construction of the project, Oncor shall cease work immediately

in the vicinity of the resource and report the discovery to the Texas Historical Commission (THC) and take action as directed by the THC.

4. Oncor shall follow the procedures outlined in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines, The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by APLIC in April 2005.
5. Oncor shall minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line. Oncor shall re-vegetate using native species considering landowner preferences and to the maximum extent practical avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.
6. Oncor shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides for controlling vegetation within the right-of-way and that such herbicide use comply with rules and guidelines established in the *Federal Insecticide, Fungicide and Rodenticide Act* and with the Texas Department of Agriculture regulations.
7. Oncor shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviations in the approved route shall only directly affect landowners who received notice of the transmission line in accordance with P.U.C. PROC. Rule 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation.
8. Oncor shall provide a copy of this order to the Railroad Commission of Texas along with topographical map(s) of the selected route in electronic form and a schedule for completion of the project, no later than ten days from the date this order becomes final. Oncor shall supplement the map(s) provided to RRC in a reasonable time upon discovery of any previously unidentified oil and gas wells. Oncor shall coordinate its planning and construction schedules for the selected route, to the extent practicable, with the RRC to allow the RRC to inspect any wells identified by Oncor in the right of way of the transmission project and to take appropriate action in regards to such wells as the RRC determines necessary. Any issues that cannot be resolved by Oncor and the RRC shall immediately be brought to the attention of the Chairman of the Public Utility Commission of Texas and the Chairman of the Railroad Commission of Texas.
9. Oncor shall update the reporting of this project on their monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. Subst. R. 25.83(b). In addition, Oncor shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.

10. All other motions, requests for entry of specific findings of fact and conclusions of law, and *any other requests* for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of March 2010

PUBLIC UTILITY COMMISSION OF TEXAS

  
BARRY T. SMITHERMAN, CHAIRMAN

  
DONNA L. NELSON, COMMISSIONER

  
KENNETH W. ANDERSON, JR., COMMISSIONER