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CROSS TIMBERS CONSERVANCY
AUGUST 18, 2010

SOAH DOCKET NO. 473-10-4109
PUC DOCKET NO. 38140

APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY
LLC TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY
FOR THE RILEY-KRUM WEST 345-
KV CREZ TRANSMISSION LINE
(FORMERLY OKLAUNION TO WEST
KRUM) IN ARCHER, CLAY, COOKE,
DENTON, JACK, MONTAGUE,
WICHITA, WILBARGER, AND WISE
COUNTIES, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**CROSS TIMBERS CONSERVANCY'S INITIAL BRIEF
IN SUPPORT OF THE NON-UNANIMOUS SETTLEMENT AGREEMENT**

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**CROSS TIMBERS CONSERVANCY'S INITIAL BRIEF
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TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Cross Timbers Conservancy ("Cross Timbers")¹ and timely files its Initial Brief in Support of the Non-Unanimous Settlement Agreement. Cross Timbers is not a signatory to the Initial Joint Brief of the Settling Parties; it does concur in portions of the Joint Brief and in the proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs.² For the reasons set forth herein, Cross Timbers urges the ALJ and the Commission to approve the Non-Unanimous Settlement Agreement without change or modification.

Introduction

As a result of intense negotiations occurring over a period of several days, all but two groups of intervenors reached agreement with Oncor Electric Delivery Company LLC ("Oncor")

¹ Cross Timbers Conservancy is the authorized representative for the landowner intervenors identified on Attachment A.

² Cross Timbers identifies those portions of the Joint Brief *infra*.

and with Commission Staff on a route for this transmission line project. The parties that reached agreement entered into a Non-Unanimous Settlement Agreement ("NUS") that provides for construction of the line on a route that in many respects is the same as one of the two routes recommended by Commission Staff. Specifically, the settlement route agreed to in the NUS and referred to as Modified Route 1025 consists of the following Links: A-B1-B52-C1-C3-D3-E3-F2-F3a-F3b-K2-L4-L3-N1-N2-N3-S3-V-X.³ Staff's recommended Route 1025 consists of Links A-B1-B52-C1-C3-D3-E3-F2-F3a-F3c-K1b-K3-L3-N1-N2-N3-S3-V-X.⁴ The difference between the two routes is that Staff's Route 1025 uses Links F3c-K1b-K3 and Modified Route 1025 uses Links F3b-K2-L4, and Modified Route 1025 includes certain specific modifications to the line in the area near Sheppard Air Force Base.

The intervenors who oppose Modified Route 1025 are the Wise County Commissioners (the County does not own property that is directly affected) and landowners who own an undivided interest in property on Link N3, namely, Christopher Forbis, Dr. Thomas Long, Jana S. Woodruff and Nancy F. Carnahan (the "Forbis Group").⁵ The Wise County Commissioners and the Forbis Group oppose constructing the transmission line on Links N2 and N3.

The Texas Supreme Court ruled in *City of El Paso v. Public Utility Commission of Texas*, 883 S.W.2d 179 (1994) that approval of a non-unanimous settlement in a contested proceeding is reasonable if certain conditions are met. Specifically, the record must show that:

1. non-signing parties have notice that the NUS may be considered by the Commission and are afforded an opportunity to be heard regarding the NUS;
2. the matters contained in the NUS are supported by a preponderance of the credible evidence in the case;
3. the NUS is in accordance with applicable law;

³ Oncor Ex. 20, Jasper Supplemental Settlement Testimony at 3-4.

⁴ Staff Ex. 1, Sullivan Direct at 22.

⁵ Joint Notice of Non-Unanimous Settlement at 2.

4. the NUS results in a prudent and reasonable route for the transmission line;⁶ and
5. the results of the NUS are in the public interest.

All of the conditions are satisfied here. The non-signing parties had notice that the NUS would be considered by the Commission and had an opportunity to be heard. The route upon which the signatory parties agreed is supported by a preponderance of the credible evidence, is in accordance with applicable law and is in the public interest. Cross Timbers' Initial Brief will address each of the requirements established in *El Paso* in the context of addressing the issues identified in the Commission's Order of Referral.

I. Procedural History

Cross Timbers concurs in the description of the procedural history of this docket set forth in the Initial Joint Brief of the Settling Parties and is not separately addressing this issue.

II. Notice and Opportunity to Be Heard

Oncor's provision of notice of regarding the proposed transmission route satisfied the requirements of PUC. PROC. R. 22.52. Staff witness Mr. Sullivan testified as to Staff's review of the content of the notice and Staff's conclusion that notice provided by Oncor was sufficient.⁷

With respect to the NUS, all parties had notice of the hearing on the merits,⁸ all parties had notice that a route consisting of any combination of Links could be selected by the Commission,⁹ and all parties were on notice that Links N2 and N3 were included in one of the two routes proposed by Commission Staff.¹⁰ The hearing on the merits was scheduled to begin

⁶ *El Paso* was a utility rate case and, therefore, the Court's opinion discusses whether the NUS results in "just and reasonable rates." Because this is a CCN proceeding for a CREZ transmission line, this condition articulated in *El Paso* is reworded to reflect the fact that a route for the line is what is at issue. The standard of "reasonableness" applies to the selection of the route.

⁷ Staff Ex. 1, Sullivan Direct at 11.

⁸ Order No. 5 at 3.

⁹ Order No. 1 at 4.

¹⁰ Staff Ex. 1, Sullivan Direct at 12-13. Staff's testimony was timely filed on July 16, 2010, and served in accordance with Order No. 6.

on the morning of August 2, 2010, and all parties present that morning that were informed that Oncor and the United States Air Force were engaged in settlement efforts that were likely to be successful.¹¹ Immediately thereafter settlement talks between Oncor and other parties began. Thus, the Forbis Group and the Wise County Commissioners had notice of the hearing, notice that the line could be located on Links N2 and N3, and notice of the settlement.

Cross examination of all witnesses was waived on August 3, 2010,¹² and cross examination of Oncor's and the U.S. Air Force's witnesses regarding the NUS was waived on August 4, 2010, when their testimony was offered into the record.¹³ The Forbis Group and the Wise County Commissioners elected not to cross-examine any witnesses.

Under PUC. PROC. R. 22.206, non-settling parties have a right to a full hearing on any disputed issues. Neither party opposing the settlement sought a hearing on the NUS, however. Rather, counsel for the Forbis Group stated on the record that the Forbis Group would submit briefs.¹⁴ The non-signatory parties were not denied their right to a full hearing. The requirements of *El Paso* regarding notice and an opportunity to be heard were fully satisfied.

III. Fulfillment of CREZ Transmission Line Project

Did Oncor submit the CCN application in compliance with the Orders in Docket Nos. 35665 and 36801 designating it as a CREZ priority Transmission Plan facility? If not, should the Commission revoke the designation awarded to Oncor and select another entity for the CREZ Priority Transmission Plan facility at issue in the docket pursuant to P.U.C. SUBST. R. 25.216(f)(1)?

Will completion of the Proposed Transmission Line Project accomplish the intended result for the CREZ project designated as "Riley-Krum West 345 kV CREZ Transmission Line" in the CREZ Transmission Plan and ordered by the Commission in Docket Nos. 35665 and 36801?

¹¹ Tr. at 18.

¹² Tr. at 37.

¹³ Tr. at 44-45.

¹⁴ Tr. at 61.

Staff witness Mr. Sullivan testified regarding Oncor's compliance with the Commission's Orders in Docket Nos. 35445 and 36801. Based on his review of the application, Oncor's testimony, intervenor testimony, and discovery responses, Mr. Sullivan concluded that Oncor's application was submitted in compliance with Docket Nos. 35665 and 36801 designating it as a CREZ Transmission Plan Facility and that no party asserted the position that the Commission should revoke the CREZ Facility designation.¹⁵ Staff witness Mr. Sullivan further testified that the completion of the project proposed by Oncor in this docket will accomplish the intended result for the CREZ priority line project originally designated as "Oklaunion to West Krum" in the CREZ Transmission Plan and ordered by the Commission in Docket Nos. 35665 and 36801.¹⁶ No witness testified to the contrary.

IV. Route

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)?

Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?

If alternative routes or facility configurations are considered due to individual landowner preference:

- a. **Have the affected landowners made adequate contributions to offset the additional costs associated with the accommodations?**
- b. **Have the accommodations to landowners diminished the electric efficiency of the line or reliability?**

A. Which proposed route is the best alternative?

The NUS is fully consistent with applicable law. Modified Route 1025 satisfies the factors set forth in PURA § 37.056(c)(4), excluding (4)(E), and P.U.C. SUBST.

¹⁵ Staff Ex. 1, Sullivan Direct at 12.

¹⁶ *Id.*

R. 25.101(b)(3)(B) that must be considered in selecting a route for a proposed transmission line. For all of the reasons discussed below, the preponderance of the credible evidence in the record demonstrates that the route agreed upon by the signatory parties to the NUS complies with applicable law, is reasonable and is in the public interest.

(1) Community values

Modified Route 1025 reflects community values in that (1) almost all intervenor parties have executed the NUS and support construction of the proposed transmission line on this route; (2) almost all intervenor landowners have executed the NUS and support construction of the proposed transmission line on this route; (3) no intervenor who opposes the NUS and opposes approval of Modified Route 1025 filed any testimony in this proceeding advocating for or against any of the routes Oncor proposed for this transmission line;¹⁷ and (4) Oncor has agreed to make modifications regarding construction of the line that will address the safety concerns raised by the U.S. Air Force and the City of Wichita Falls and will reduce the impact on the settling landowner parties on whose property the line will be placed.

(2) Recreational and park areas

None of the routes proposed by Oncor and no links that make up those routes cross any federal or state park areas.¹⁸ Links N2 crosses Lake Amon G. Carter (owned by the City of Bowie) for slightly more than 1000 feet.¹⁹ Links N2 and N3, which are part of both Staff's proposed Route 1025 and the stipulating parties' Modified Route 1025, cross a small portion of the LBJ National Grasslands (N2 crosses the Grasslands for 319 feet and N3 crosses for 156 feet).²⁰ As stated in the Joint Brief, Oncor is working with neighboring landowners to avoid

¹⁷ The Forbis Group did not submit any testimony in this proceeding. It did submit a statement of position.

¹⁸ Staff Ex. 1, Sullivan Direct at 28.

¹⁹ *Id.*

crossing the Grasslands. Even if Oncor is unable to reach agreements to move the line, this very limited crossing of the small portion of the Grasslands that is near Links N2 and N3 is far less intrusive and damaging than if a route that included Link Q2 were selected for the line.

The Grasslands is a patchwork of federal lands totaling more than 20,000 acres.²¹ It is the only urban grasslands in the country and provides recreational opportunities as well as a variety of wildlife habitat.²² Looking at Figure 3-1H and Figure 3-1I of the Environmental Assessment, one quickly sees that the Grasslands consists of a large central core and many nearby parcels that vary greatly in size. As is plain from these two maps, the large central parcel and many of the larger parcels are near Link Q2; far fewer parcels, generally smaller in size and farther removed from the central core, are located near Links N2 and N3. Moreover, with respect to the issue of the transmission line causing fragmentation of wildlife habitat in proximity to the Grasslands, that concern is minimal with respect to these Links because the City of Alvord exists between the central portion of the Grasslands and the small parcels affected by Links N2 and N3.

Thus, with respect to this important park and recreation area, the selection of a route for the transmission line that uses Links N2 and N3 is far preferable to any alternative route that would use Link Q2.

(3) Archeological and historical impact; aesthetic values

A review of Oncor's EA shows that Modified Route 1025 will have no impact on archeological or historic sites. Each of Links N2 and N3 are within 1000 feet of recorded archeological sites, but the site near Link N2 is believed to be destroyed and the site near

²⁰ Second Supplement to Oncor's Application, filed July 30, 2010, included in Oncor Ex. 1.

²¹ Cross Timbers Ex. 2, Van Schaik Direct at 5.

²² *Id.*

Link N3 is ineligible for designation on the National Register of Historic Places (“NRHP”) and no further work on the site was recommended.²³ As Staff witness Mr. Sullivan testified, none of the sites recorded in the NRHP is known to occur within 1000 feet of any of the alternative routes that Oncor proposed.²⁴ Each of Links B52 and N3 are within several hundred feet of historic cemeteries and these Links, as well as Link C3, are within several hundred feet of Texas Historical Markers.²⁵ Mr. Sullivan concluded that a route using these Links will not impact either the cemeteries or the historical markers, however, because they will not be crossed or disturbed during construction of the line.²⁶

Cross Timbers recognizes that constructing a power line on steel lattice towers 125 feet tall, and clear-cutting right-of-way beneath it, will have a negative impact on aesthetic values wherever the line is near residences and wherever its location detracts from the rural character of those portions of the study area where high voltage transmission power lines and oil and gas production are not already present. Cross Timbers supports the accommodations that Oncor has agreed to make with individual intervenor landowners among the Stipulating Parties with respect to construction and placement the line to reduce the aesthetic impact.

(4) Environmental integrity

The settlement route that has been agreed upon by Oncor, Staff and the vast majority of intervenors in this case does not include Link Q2 and thus does not have the negative impact on the LBJ National Grasslands and the wildlife habitat on neighboring lands that is described by Cross Timbers’ expert witness, wildlife biologist Dan Van Schaik. The importance of the Grasslands lies in the diversity of habitat it supports. As Mr. Van Schaik described it, “The

²³ Staff Ex. 1, Sullivan Direct at 33.

²⁴ Staff Ex. 1, Sullivan Direct at 31.

²⁵ *Id.* at 32.

²⁶ *Id.*

Grasslands has nearly 1,400 known plant species, which is important because there are probably only about 2,000 species in Texas. Two hours east of the Grasslands you are in deciduous forests. Two hours west of the Grasslands and you are in the Great Plains. The LBJ National Grasslands is a protected wedge in the middle between those two areas.”²⁷

The overarching problem with locating the transmission line on Link Q2 is that it will cause continued fragmentation—separation of continuous habitats into isolated fragments—of what already is a very fragile habitat. Agriculture, suburban development, and clear-cutting of woodlands often results in carving a once continuous habitat into separate, disconnected pieces that can result in “reduction of total area of accessible habitat, decrease in the interior-edge ratio, isolation of native genetics, and decrease of the average size of habitat.”²⁸ As Mr. Van Schaik testified, sustained success of the Grasslands regional system is very heavily dependent on retaining continuous, “unfragmented” access to the properties located along Link Q2 as designated wildlife management areas and private extensions of the LBJ National Grasslands, without the intrusions (vertical and ground obstruction) of utility transmission construction.²⁹

Mr. Van Schaik described the effects of fragmentation as follows:

With little exception, the most common failure in wildlife production is not provision of food, water or refuge sources, but lack of connection between them. Fragmented landscapes restrict the ability of bird or animal populations to move away from undesirable environments or toward favorable conditions. Original continuous landscapes were crucial to perennial establishment and well being of wild plant and animal communities when all types of ground vegetation, forests, natural field openings, and water resources were evenly distributed. Plant and animal populations resulting from fragmentation can easily become isolated leading to an array of serious genetic problems due to a lack of genetic diversity. Lack of genetic diversity can magnify health problems in animals and limit natural disease resistance in plants. It can also

²⁷ Cross Timbers Ex. 2, Van Schaik Direct at 5.

²⁸ *Id.* at 13.

²⁹ *Id.* at 18.

cause adaptation problems for species that are attempting recovery.³⁰

Although Link Q2 does not cross the Grasslands, it does cross the acquisition boundary of the park through neighboring properties.³¹ These properties serve an important role in supporting the wildlife the Grasslands are intended to protect. As Mr. Van Schaik testified,

If these protected grassland habitats are as successful in encouraging migrant and resident wildlife visitation as intended by founding federal agencies, then increased bird/animal population densities (overflow) will naturally disseminate from these refuges onto adjacent and contiguous areas.

* * * *

[B]irds, animals and plants do not recognize human property boundaries. Because much of the vegetation on surrounding private properties is similar to that on the federal lands, translocating wildlife species will not detect a difference. The physical presence of equipment and personnel during construction activities along with residual clear-cut corridors will create a manmade travel barrier that many species will avoid.

Also, as towers and supporting structures are erected, the vertical height of these structures with the lines suspended, will create a sudden change in the "visual horizon" for many birds. Such vertical obstruction within visual horizon is caused by major variance between height of towers and typical local tree canopy. This can and will cause certain birds to alter established flight patterns within that area.³²

Furthermore, even after construction of the transmission line is complete, it is Mr. Van Schaik's opinion that negative impacts on wildlife will continue to exist.

Soils will have been compacted where heavy equipment has been used and stored; right-of-way will have been cleared for miles on private lands near the Grasslands. Some plant species either will be very slow to return or potentially will not return at all, even in areas that are not part of the right-of-way but are just used by Oncor during construction. In the right-of-way itself, permanent change also will occur. The initial, nonselective clear-cutting of

³⁰ *Id.* at 14.

³¹ *Id.* at 9.

³² *Id.* at 9-10.

native woodlands during construction triggers natural plant succession. Unfortunately, less desirable species are quick to invade these areas and mature canopy with important mast producers are replaced by sumac, cedars/junipers, webbed elm, mesquite and other aggressive brush species. This in turn changes wildlife habitation from forest/woodland dwellers to edge dwellers. Because most successional plant invaders average one foot or more growth per year in this region, the edge dwellers soon change to heavy brush dwellers just in time for scheduled re-clearing every 5 years. This roller coaster of habitat alteration leads to great confusion in stabilization of wooded ecosystems (especially riparian woodlands).³³

In addition to the negative impact on wildlife habitat, locating the proposed line on Link Q2 would adversely impact the riparian basin associated with Denton Creek. Riparian systems not only provide habitat and travel routes for birds and animals, but also are very important to water quantity and water quality.³⁴ Mr. Van Schaik testified that “[p]rotecting native vegetation and closely monitoring land use within an entire watershed is imperative to preserving the ultimate condition of local reservoirs. Clearing of critical riparian vegetation often causes accelerated runoff, large-scale erosion and net loss of *available water* due to increased downstream flow.”³⁵ In the area where Link Q2 is located, water that is held in the soil is essential to sustain plants between rains.³⁶ Mr. Van Schaik testified that clear-cutting and right-of-way construction within riparian basins causes accelerated runoff of precipitation instead of allowing saturation with natural drainage with the result that the capacity of the soils to retain needed moisture is greatly reduced.³⁷

For all the reasons stated in his testimony, Mr. Van Schaik concluded that constructing the proposed transmission line along Link Q2 should be avoided, and he urged the Commission

³³ *Id.* at 10.

³⁴ *Id.* at 12.

³⁵ *Id.*

³⁶ *Id.* at 13.

³⁷ *Id.*

to select a route that did not include this Link. The negative impacts described by Mr. Van Schaik are avoided altogether by the NUS because the route on which the settling parties have agreed avoids Link Q2.

(5) **The effect of granting the certificate on the ability of the state to meet the goal established by Section 39.904(a)**

Cross Timbers concurs in the Initial Joint Brief of the Settling Parties and is not separately addressing this issue.

(6) **Engineering constraints**

Oncor did not identify any engineering constraints that would prevent Oncor from constructing the proposed transmission line on Modified Route 1025. Oncor witness Ms. Alvarez stated in her Direct Testimony that “none of Oncor’s filed routes present any engineering constraints that cannot be resolved with additional consideration during the design and construction phase of the project.”³⁸ Neither the Forbis Group nor the Wise County Commissioners submitted any testimony in this case; thus, there is absolutely nothing in the record that demonstrates that any engineering constraints exist with respect to Link N2 or Link N3. The absence of engineering constraints regarding Modified Route 1025 is succinctly borne out by Ms. Alvarez’ Supplemental Settlement Testimony in which she states that: “The settlement route is entirely made up of links that Oncor filed in its Application. I have previously reviewed each of these links individually prior to the filing of the Application. I have identified no additional engineering constraints with the proposed settlement route that cannot be resolved through detailed engineering and design work.”³⁹

³⁸ Oncor Ex. 15, Alvarez Direct at 15.

³⁹ Oncor Ex. 19, Alvarez Supplemental Settlement Testimony at 2.

(7) **Compatible rights-of-way**

Like Staff's proposed Route 1025, the route agreed upon by the settling parties has a greater portion of its length that utilizes compatible rights-of-way than many of the routes proposed in Oncor's application, including the Preferred Route. The Commission previously has stated its strong preference for utilizing or paralleling existing compatible right-of-way for new CREZ transmission lines.⁴⁰ Cross Timbers agrees; the use of compatible rights-of-way is very important with respect to both land use planning and the goal of reducing the adverse impact these lines can have on parks, recreation and wildlife habitat.

Cross Timbers' expert witness Edward McGavran testified that, in his opinion, using compatible rights-of-way is an essential element in transmission line siting.⁴¹

When we look at overall project impacts on land use that relate directly to land values, areas that have already been impacted by other transmission lines, highways, pipelines, railways, etc. will have a lower marginal degree of impact than areas that have not been previously impacted by the same type of projects mentioned. In other words, new impact is more severe than additional impact.

Those impacts on land use go beyond actual land value and into such areas as endangered species habitat, reduction of wetlands, aesthetic value, and any other criteria or factors that come up in transmission line siting. One thing we want to establish from a land use perspective is the highest and best use of available land. If we have established over time what appears to be a corridor for utility and transportation infrastructure, the best and highest use of that land is to serve as a conduit for that infrastructure for two reasons. One, we have an established corridor to utilize and we can maximize the use of the nonaffected land for other purposes that could be considered "highest and best use" such as recreational areas, wildlife habitat, commercial and industrial development, housing development, etc. Two, we add predictability to the land use question on a regional basis. This

⁴⁰ *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Riley-Krum West 345-kV CREZ Transmission Line (Formerly Oklaunion to West Krum) in Archer, Clay, Cooke, Denton, Jack, Montague, Wichita, Wilbarger, and Wise Counties, Texas, Order on Appeal of Order No. 3 (Jul. 9, 2009).*

⁴¹ Cross Timbers Ex. 1, Corrected McGavran Direct at 16.

results in maximizing the predictable total land use of the region as opposed to having an unpredictable land use situation which can harm both preservation of environmentally sensitive areas and long term economic development.⁴²

With respect to parks and recreational areas, Mr. McGavran testified that, in general, the best way to avoid these areas, or minimize the impact on them, is to use compatible rights-of-ways.⁴³ Cross Timbers witness expert wildlife biologist Daniel Van Schaik agreed, concluding that, “[t]he more the proposed transmission line utilizes existing compatible rights-of-way, the less new right-of-way will be required and the less environmental damage is likely to result.”⁴⁴

Oncor’s Preferred Route parallels existing compatible corridors, including apparent property boundaries, for only 51.11% of its length.⁴⁵ Commission Staff’s Route 1025 is significantly better in this regard; Route 1025 parallels existing compatible corridors, including apparent property boundaries for 547,383 feet or 69.06 % of its length.⁴⁶ Modified Route 1025 is essentially the same—68.02%. Modified Route 1025 is longer (852,301 feet vs. 792,612), but the portion of the line that is parallel to compatible right-of-way including property boundaries also is longer (579,705 feet vs. 547,383).⁴⁷

(8) Conformance with the Commission’s policy of prudent avoidance

Prudent avoidance is defined by P.U.C. SUBST. R. 25.101(a)(4) as follows: “The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.” This policy has been implemented by minimizing, to the extent possible, the number of habitable structures that are located within close proximity to a proposed transmission

⁴² *Id.* at 16-17.

⁴³ *Id.* at 21.

⁴⁴ Cross Timbers Ex. 2, Van Schaik Direct at 16.

⁴⁵ Cross Timbers Ex. 1, Corrected McGavran Direct at 11.

⁴⁶ Staff Ex. 1, Sullivan Direct, Att. MS-3.

⁴⁷ Comparison of Staff Ex. 1, Sullivan Direct, Att. MS-3 and Oncor Ex. 20, Jasper Supplemental Settlement Testimony Ex. CJS-2.

route. Oncor's application identified the number of habitable structures within close proximity to each of the routes it proposed, setting forth in Table 7-1 of Attachment No. 1 of the Environmental Assessment the number of habitable structures within 500 feet of the center line of the proposed transmission right-of-way.

Staff witness Mr. Sullivan testified that the main population center for this CCN is Wichita Falls.⁴⁸ He noted that the routes proposed by Oncor go around this city and that there is fewer than one habitable structure per mile on any of the routes.⁴⁹ Using Oncor's data on habitable structures within 500 feet of the center line, Mr. Sullivan determined that there were 106 such structures on Staff's proposed Route 1025.⁵⁰ Oncor witness Mr. Jasper testified that there are 102 such structures on Modified Route 1025.⁵¹ Based on the evidence in the record, Modified Route 1025 complies with the Commission's policy of prudent avoidance.

B. Are there alternative routes or facilities configurations that would have a less negative impact on landowners?

Because the Forbis Group did not submit testimony, there is no evidence in the record regarding any alternatives that would have reduced the negative impact on these landowners. Statements of position submitted by elected representatives of Wise County indicate that selecting a route outside of Wise County would have a less negative impact.

As evidenced by the NUS, Modified Route 1025 does lessen the negative impact of the line on the signatory landowners. With respect to Cross Timbers, both Staff's proposed Route 1025 and Modified Route 1025 would result in a far smaller negative impact on a major park and recreational area—the LBJ National Grasslands—and on wildlife habitat in proximity to the Grasslands than Oncor's Preferred Route 114. Cross Timbers considers both Staff's

⁴⁸ Staff Ex. 1, Sullivan Direct at 37.

⁴⁹ *Id.*

⁵⁰ Staff Ex. 1, Sullivan Direct, Att. MS-3.

⁵¹ Oncor Ex. 20, Jasper Supplemental Settlement Testimony at CSJ-S-2.

Route 1025 and the settlement route superior from an environmental perspective to any alternative route that would include Link Q2. Moreover, the modifications made to Route 1025 as a result of the NUS will result in no greater negative impact on environmental, archeological, or historic features of the affected land. The modifications will increase the length of the line that follows compatible right-of-way, including apparent property boundaries. The modifications also reflect concessions and accommodations that address the varied interests of the landowners, including the U.S. Air Force's and neighboring cities' concerns regarding air safety at Sheppard Air Force base.

C. If alternative routes or facility configurations are considered due to individual landowner preference, have affected landowners made adequate contributions and have the accommodations to landowners diminished the electric efficiency of the line or reliability?

The NUS represents a compromise that reflects the community values of the vast majority of the landowners who intervened, and the needs of the U.S. Air Force and the communities located near Sheppard Air Force Base. The signatory parties have made concessions and reached agreements regarding the location of the line and modifications of the supporting structure. The NUS reflects intertwined concessions and accommodations agreed to by the affected landowners who have intervened in this proceeding and by Commission Staff. Oncor is a signatory to the NUS. Neither of the Oncor witnesses who testified in support of the NUS stated that any accommodations made to landowners would diminish the electric efficiency of the line or its reliability.

V. Proposed Modifications

Oncor witness Mr. Donohoo testified regarding two modifications: (1) the change in the location of the western endpoint of the line and (2) the use of a different conductor for the line. According to Mr. Donohoo, the "CTO proposed constructing the line to the American Electric

Power ("AEP") owned Oklaunion Generating Station. AEP has indicated that construction into Oklaunion is not feasible due to space limitations and has instead proposed the new western endpoint at the new Riley Switching Station, which is located approximately one mile east of the Oklaunion station. The Riley Switching Station will be constructed by ETT, AEP's affiliate."⁵² This change was approved by ERCOT.⁵³

With respect to the second modification, Mr. Donohoo testified that, "CTO proposed constructing the line using two 1433.6 kcmil ACSS/TW ("1433.6 conductor") for the circuits. As a modification, Oncor proposes to use bundled kcmil ACSS/TW ("1926.9 conductor"), a standard conductor on Oncor's 345 kV transmission line for both circuits."⁵⁴ Mr. Donohoo testified that "the 1926.9 conductor meets or exceeds the capability of the conductor included in the CTO. Importantly, the peak operating current rating for this twin-bundled conductor is 5,000 amperes which is equal to the CTO conductor."⁵⁵ Mr. Donohoo further stated that:

The 1433.6 conductor is not currently used on Oncor's system. Utilizing the 1926.9 conductor, a standard conductor on Oncor's system, provides numerous operational efficiencies or benefits. First, it is the diameter equivalent of 1590 kcmil ACSR, another standard conductor frequently used throughout Oncor's transmission system. Diameter equivalence permits hardware and installation equipment to be used interchangeably which reduces material lead time, simplifies material procurement, and allows for greater flexibility during construction. Furthermore, minimizing the number of unique components allows Oncor to maintain a reduced inventory of standardized hardware needed for emergency events and expedites service restoration. In addition, the 1926.9 conductor is well-suited to match Oncor's standard 345 kV lattice steel tower configurations, span lengths, and loading criteria. Another benefit of the 1926.9 conductor is the fact that it has a lower impedance than the CTO conductor. This lower impedance means that utilizing the 1926.9 conductor will reduce megawatt

⁵² Oncor Ex. 5, Donohoo Direct at 6.

⁵³ *Id.* at 7.

⁵⁴ *Id.*

⁵⁵ *Id.* at 8.

losses compared to the ERCOT proposed conductor. Another benefit is lower structure heights can be used with Oncor's proposed conductor. Utilizing the 1433.6 conductor would result in structures that are typically five feet taller because the maximum operating temperature required to achieve the same capacity is higher for the 1433.6 conductor than the 1926.9 conductor. The higher maximum operating temperature results in greater conductor sag and therefore taller structures would be necessary to maintain the required electrical clearances.⁵⁶

Mr. Donohoo testified that Oncor's proposed modifications were discussed with ERCOT and ERCOT does not object.⁵⁷ Staff witness Mr. Sullivan testified that the planned modifications are necessary, cost effective and consistent with the CTO Study.⁵⁸

Cross Timbers does not object to Oncor's proposed modifications, and concludes that the preponderance of the credible evidence shows that these modifications are prudent and reasonable.

VI. Estimated Cost

Are there discrepancies between the estimated actual cost included in the CCN application in this docket and the cost identified for the proposed project in the CREZ Transmission Plan?

The route agreed to by Oncor, Commission Staff, and all of the intervenor landowners except the Forbis Group is expected to be more expensive than the estimated costs for the ninety routes Oncor presented in its application. Oncor's estimated costs for the routes proposed in its application range from \$190,873,000 million to \$224,000,000 million.⁵⁹ Route 1025 has an estimated cost of \$224,000,000.⁶⁰ Modified Route 1025 has an estimated cost of \$239,000,000 million.⁶¹ More than half of the increased cost is attributable to the cost of using a

⁵⁶ *Id.* at 8-9.

⁵⁷ *Id.* at 9-10.

⁵⁸ Staff Ex. 1, Sullivan Direct at 20-21.

⁵⁹ Oncor Ex. 1, Table ____ of the Application.

⁶⁰ Staff Ex. 1, Sullivan Direct at 23.

⁶¹ Oncor Ex. 19, Alvarez Supplemental Settlement Testimony at 2.

different supporting structure for the portion of the line near Sheppard Air Force Base in order to reduce the height of the line to address the Air Force's safety concerns;⁶² that additional cost alone is \$8 million.⁶³ In addition, Modified Route 1025 is longer (852,301 feet vs. 792,612) which adds additional costs; however, it also increases the portion of the line that is parallel to compatible right-of-way including property boundaries (579,705 feet vs. 547,383).⁶⁴ Cross Timbers considers the utilization of compatible right-of-way to be a key element in evaluating potential transmission line routes;⁶⁵ thus, this aspect of the modified route is advantageous.

Although the route arrived at through settlement negotiations and the NUS is more expensive than the routes Oncor originally proposed in its Application, the cost is still well below the estimated cost of this line that was set forth in the CTO Study. The CTO Study estimated a cost of \$263,200,000 for the line, with an additional cost of \$20,000,000 for the substation.⁶⁶ Oncor's estimated cost for the substation is \$14,930,000.⁶⁷ Comparing the combined cost of this project in the CTO Study (\$283,200,000) to the combined cost of Modified Route 1025 and the substation (\$253,930,000) reveals that the total cost of this project is well within the prior estimate. Moreover, the cost is less than originally estimated by ERCOT in the CTO Study if one considers the difference in the length of the route as proposed in the CTO Study (106 miles essentially in a straight line) vs. the length of Modified Route 1025 (161 miles).

⁶² The safety concerns of the U.S. Air Force are discussed in considerable detail in its Ex. 3, Altoballo Revised Supplemental Direct.

⁶³ *Id.* at 2-3.

⁶⁴ Comparison of Staff Ex. 1, Sullivan Direct, Att. MS-3 and Oncor Ex. 20, Jasper Supplemental Settlement Testimony Ex. CJS-2.

⁶⁵ Cross Timbers Ex. 1, Corrected McGavran Direct at 16.

⁶⁶ Staff Ex. 1, Sullivan Direct at 23.

⁶⁷ *Id.* at 24.

ERCOT estimated the cost per mile to be \$1.88 million;⁶⁸ applying that cost to actual route length yields a cost of approximately \$300 million.

Examining the cost of the agreed-upon route from all these perspectives, it is apparent that the route in the NUS is entirely reasonable from a cost perspective and should be approved.

VII. Texas Parks and Wildlife Department Issues

On May 5, 2010, the Commission issued its Order of Referral and Preliminary Order in this docket. The Order addressed the Commission's statutory duty to provide written responses to all TPWD recommendations or informational comments made on or after September 1, 2009 in CREZ transmission line cases, and included an additional issue to be addressed at hearing. The Commission's Order requires the ALJ and the parties to address the following issue and its subparts:

- 1) On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:
 - a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?
 - b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
 - c) What other disposition, if any, should be made of any recommendations or comments?
 - d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.

⁶⁸

Oncor Ex. 7, Alvarez Direct at 12.

TPWD did provide recommendations and comments in this case in its letter to Brian Almon of the PUC Staff dated June 29, 2010. In its letter, TPWD identified a route (Route 97) for the line that it perceived to be more consistent with its concerns than Oncor's Preferred Route (Route 114). Staff witness Mr. Sullivan attached a copy of TPWD's letter to his Direct Testimony and addressed TPWD's recommendations, specifically comparing the routes he recommended to the route recommended by TPWD.⁶⁹ Mr. Sullivan concluded that both of Staff's proposed routes were a better choice than Oncor's Route 114 using TPWD's criteria.⁷⁰

Mr. Sullivan also recommended in his testimony that the Commission direct Oncor to address TPWD's recommendations and concerns regarding protected species, and comply with applicable state and federal law.⁷¹ Cross Timbers supports Staff's recommendations.

Conclusion

The Non-Unanimous Settlement Agreement reflects an agreement reached among Oncor, Commission Staff, the U.S. Air Force, all of the intervenor cities and almost all of the intervenor landowners regarding the location of the proposed CREZ transmission line. The NUS in every respect satisfies the requirements established by the Texas Supreme Court for Commission approval of a non-unanimous settlement. As Cross Timbers has demonstrated, the non-signatory parties had notice and an opportunity to be heard; the route on which the stipulating parties agree complies with all applicable law and the Commission's rules governing selection of a route for this line; the preponderance of the credible evidence in the record supports the route and the NUS; and the route is reasonable and in the public interest.

Cross Timbers urges the ALJ and the Commission to approve the NUS without change.

⁶⁹ Staff Ex. 1, Sullivan Direct at 34-36 and MS-2 ("TPWD Letter").

⁷⁰ *Id.* at 35.

⁷¹ Staff Ex. 1, Sullivan Direct at 36.

Respectfully submitted,

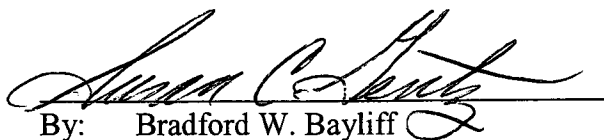
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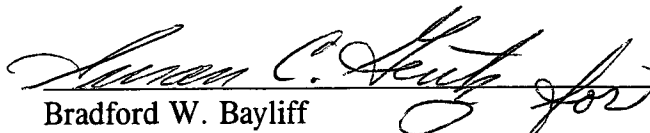
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ATTORNEYS FOR CROSS TIMBERS CONSERVANCY

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2010, a copy of Cross Timbers Conservancy's Initial Brief in Support of the Non-Unanimous Settlement Agreement was served in accordance with SOAH Order No. 6.


Bradford W. Bayliff

Attachment A

**Intervenors Who Have Appointed Cross Timbers Conservancy
As Their Authorized Representative**

Barton M. Bonney
Mark Brim for Barbara S. Brim & HDB Non-Exempt Qtip Trust
Bill E. and Frances Carter
Robert B. and Sheila Carter
F.M. and Marilyn Collins
Bonnie M. and Russell F. Coonley
Nolen Griffeth and children: Grady L. and Johnnie Griffeth, Eddie Ray Griffeth, and Charles Griffeth
Inez and Jimmy Hand
Charles R. Long
Robbie J. Lynch
James D. and Cynthia Morse
Leslie Recine
Blake and Carole Sandford and Sandford Family L.P.
William R. Dickson
John and Audrey Dyer
Pauline and Wendell Elliott
Tina L. and Richard M. Gallagher
Travis and Robin Hofstra
Matt and Cody Summers
James and Donna Vance
Wilton Dale and Judith White
Ronnie, Dennis and Verona Woods
Charles W. and Annabelle Brown
Jerry and Joanna Cody
David L. and Suzy Willeford
David and Catherine Frazey
Mende and John Hanley
Imogene and Gordy Lynch
Miranda Lee Florida and R. E. Florida III
Barbara and Tom L. Robinson
Clyde Landis
Louis and Margaret Dooling
Barbara and Hal Boyd
Reginald O. Riels and Sharon Riels
Roy and Nancy Harlan
Doyle and Virginia Lynch
Janet and Joel Brockett
Shirley and Neal Fortenberry
Bennie King
William and Kathryn Lampman
Guy and Shanda Lampman
Terry and Raymond Hamm and Ray Hamm
C. Harold and Carolyn Morgan
Randy Slimp