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**SOAH DOCKET 473-10-4398
PUC DOCKET NO. 38230**

APPLICATION OF LONE STAR	§	
TRANSMISSION, LLC FOR A	§	BEFORE THE STATE OFFICE
CERTIFICATE OF CONVENIENCE AND	§	
NECESSITY FOR THE CENTRAL A TO	§	OF
CENTRAL C TO SAM	§	
SWITCH/NAVARRO CREZ	§	ADMINISTRATIVE HEARINGS
TRANSMISSION LINE	§	

REPLY BRIEF

OF

CITY OF ABILENE

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1591

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APPLICATION OF LONE STAR TRANSMISSION, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE CENTRAL A TO CENTRAL C TO SAM SWITCH/NAVARRO TRANSMISSION LINE	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**REPLY BRIEF OF
CITY OF ABILENE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The City of Abilene (“City” or “Abilene”) files this reply brief relating to Lone Star Transmission, LLC’s (“Lone Star”) Application for a Certificate of Convenience and Necessity (“CCN”) for the Central A to Central C to Sam Switch to Navarro CREZ transmission line (“Project”). Abilene responds to the arguments of Chimney Creek Land Company, LLC (“CCLC”). As demonstrated in Abilene’s Initial Brief, all routes using Link L (Routes AC 3, 5, 7, or 9) are *not* the best alternatives for the transmission line. The proposed transmission line should be constructed along one of the other filed routes or along the unfiled route proposed by Dr. James Duff (“Compromise Route”) using Links B-E-H-G.

I. INTRODUCTION AND SUMMARY

The City of Abilene maintains its position from its initial brief that Routes AC 3, 5, 7, and 9 are not the best options. While claiming the role of a “single voice” that became a “target” during the hearing, CCLC is asking that its self interest be given greater weight than the community interests of the citizens of the City of Abilene.¹ The City responds to CCLC’s assertions otherwise. Routes 3, 5, 7, and 9 are poorest in meeting the following routing criteria:

- Respecting Community Values

¹ Initial Brief of Chimney Creek Land Company at 1, 15, 20, and 22 (“CCLC Brief”).

- Avoidance of Parks and Recreational Areas
- Preservation of Environmental Integrity
- Compliance with the Policy of Prudent Avoidance
- Cost

The City has been careful not to advocate in favor of a particular route, but the facts in the record demonstrate that other routes, including Compromise Route B-E-H-G, better meet the routing criteria listed above than either AC 3, 5, 7, or 9.

II. PROCEDURAL HISTORY, JURISDICTION AND NOTICE (*Preliminary Order Issue No. 2*)

Not briefed.

III. ISSUES RELATING TO THE APPLICATION

Not briefed.

IV. ROUTE SELECTION

A. Which Transmission Line Route is the Best Alternative, Weighing the Factors in PURA § 37.056(c)(4), excluding (4)(E), and PUC SUBST. R. 25.101 (b)(3)(B) (*Preliminary Order Issue No. 6*)

1. Community Values

Chimney Creek Land Company alleges that community values support avoiding Link G (and by extension, the CCLC property).² CCLC points to very little evidence in the record to support this position³ — this is because the community values of the study area do not support avoiding Link G. As demonstrated in Abilene’s initial brief, the community has instead expressed a preference to avoid the use of Link L.⁴ As expressed through community official Assistant City Manager David Vela, the community north of Abilene along Link L is overburdened with existing transmission lines and wishes to avoid an addition to their existing

² CCLC Brief at 4-5.

³ *Id.*

⁴ Direct Testimony of David A. Vela (“Vela Direct”), Abilene Ex. 1 at 3 and Attachment B to same.

burden.⁵ Additionally, the community has also expressed a preference to preserve refuge/park land and future residential areas as planned in Abilene's Lake Fort Phantom Hill Development Plan.⁶

CCLC also alleges that the "State's" community values also support avoiding Link G.⁷ CCLC claims that Link G would cause "land fragmentation," contrary to the values of the State of Texas as a whole.⁸ However, it is evident that CCLC's real complaint is that Link G traverses its property—not that the "community" disfavors Link G. Additionally, as discussed below, CCLC owns enough property that it is possible to minimize the impact of Link G (and any fragmentation of that property) and still respect the values of the community.

The Blackard Intervenors demonstrate the true community values of the area. The Blackard Intervenors are affected by all of Links A, B and C. The Blackard Intervenors have taken the position that they would not wish the transmission line on any of their neighbors.⁹ However, because they will be affected no matter what, they advocate for a configuration that impacts them the least (using Link B).¹⁰ In stark contrast, CCLC offers no configuration that will impact them in a less obtrusive way than Link G's current configuration. CCLC owns a tract of over 14,000 acres¹¹ — a sizable piece of property. It is highly possible to reconfigure Link G in a way that lessens the effect on CCLC while avoiding any issue of unnoticed landowners. For example, Link G could follow the western and southern boundaries of the property. Attached to this brief as Attachment A is a copy of the intervenor map provided by

⁵ Vela Direct, Abilene Ex. 1 at 4.

⁶ Vela Direct, Abilene Ex. 1 at 3 and Attachments A-B.

⁷ CCLC Brief at 5.

⁸ *Id.*

⁹ Initial Brief of Blackard Intervenors at 8-9.

¹⁰ *Id.*

¹¹ Direct Testimony of T. Edgar Paup and Henry B. Paup ("CCLC Ex. 1") at 6.

Lone Star that shows a portion of CCLC property in relation to Link G (marked in blue). The evidence shows that the community values of the area do not support avoiding Link G. Routes that use Link G, such as the Compromise Route, are good choices for the proposed transmission line.

2. Recreational and Park Areas

Not briefed.

3. Historic and Aesthetic Values

The evidence in the record does not support CCLC's allegation that Link G is unusable due to "historic values."¹² CCLC alleges that the Butterfield Overland Mail Route ("Butterfield Route") crosses somewhere on their property.¹³ However, CCLC has not proven exactly *where* the Butterfield Route actually crosses its property and whether the Route is located anywhere near to the proposed placement of Link G. CCLC only cites to the testimony of Edgar and Henry Paup, which itself states: "[w]e are uncertain as to the precise location of the entire width and breadth of the Butterfield Stage Line as it meanders across the entire length of the Chimney Creek Ranch."¹⁴ CCLC did not prove the exact location of the Butterfield Route at hearing. It is pure speculation that the construction of Link G will disturb the Butterfield Route. Therefore, CCLC's argument fails; routes using Link G are good options for construction of the proposed transmission line.

4. Environmental Integrity

CCLC erroneously asserts that Route AC 9 is preferable from an environmental perspective.¹⁵ CCLC bases its arguments on the comments made by Texas Parks and Wildlife

¹² CCLC Brief at 5-6.

¹³ *Id.*

¹⁴ CCLC Ex. 1 at 7.

¹⁵ CCLC Brief at 9.

(“TPWD”).¹⁶ However, as demonstrated in Abilene’s Initial Brief, the TPWD based their conclusions for the Segment A-C routes on faulty methodology.¹⁷ As stated in Abilene’s Initial Brief, Routes AC 3, 5, 7, and 9 have the greatest impact on environmental integrity of all filed routes¹⁸ and should not be selected. Additionally, Abilene acknowledges that routes using Link L do parallel more existing transmission line right-of-way. However, as established in Abilene’s Initial Brief, Routes AC 3, 5, 7, and 9 are poor options due to the engineering constraints associated with working around the existing transmission line congestion.

5. Effect of Granting the Certificate on the Ability of this State to Meet the Goal Established in Section 39.904(a) of PURA

Not briefed.

6. Cost

Chimney Creek asserts that Route AC 5 is the best route and that the ALJs should ignore the increased cost of Route AC 5.¹⁹ However, as demonstrated in Abilene’s Initial Brief, Route AC 5 is one of the *worst* routes for most routing criteria, on top of being one of the most expensive.²⁰ Route AC 5 is the second most expensive of all the routes filed for Segment A-C.²¹ Route AC 5 does not respect community values, does not respect the integrity of parks and recreation areas, and does not best preserve the environment. Therefore, the Commission should select less costly routes that better fit the routing criteria of PURA and the Commission’s Substantive Rules.

¹⁶ *Id.* at 9-13.

¹⁷ TWPD representative Julie Wicker admitted that she based her analysis of the A-C Segment study area by starting only with the routes that contain Link L. Deposition of Julie Wicker, CCLC Ex. 26 at 43, lines 203 (Aug. 27, 2010). Additionally, she only relied on material available in her office, rather than conducting any ground reviews. *Id.* at 26, lines 7 and 10.

¹⁸ Lone Star’s Response to Abilene’s RFI No. 1 (“Abilene Ex. 2”). These routes cross streams between 112 – 129 times. Route AC 9 has the highest number of stream crossings.

¹⁹ CCLC Brief at 15.

²⁰ Initial Brief of Abilene at 6-7.

²¹ Lone Star Ex. 1, Application, Attachment 5 at 1.

7. Engineering Constraints

CCLC acknowledges that Link L will pose an engineering constraint due to excessive paralleling and crossing of existing transmission lines.²² However, CCLC attempts to downplay the severe constraint posed by Link L by claiming that the engineering constraints associated with it “is offset by the advantage brought by paralleling.”²³ While Abilene acknowledges that it is normally preferable to parallel existing transmission lines, the facts of these particular circumstances prove otherwise for Link L. The record establishes that while Link L parallels a length of existing transmission line, it also crosses existing transmission lines no fewer than *nine* times.²⁴ Furthermore, Lone Star’s engineers found that Link L was not preferable because of the number of scheduled outages of the other transmission lines and possible delay in constructing the Segment A-C line.²⁵

Further, CCLC’s characterization of the situation implies that Link L simply parallels an existing transmission line. The record shows a drastically different picture. In reality, Link L adds yet another transmission line into an area that is already completely overloaded with transmission lines. Proposed Link L, as it travels west to east as it approaches Abilene, first crosses two existing 345kV transmission lines.²⁶ Link L then follows one of those existing transmission lines west to east for a short distance.²⁷ Link L crosses two additional transmission lines during that distance, a 138 kV line and a 230 kV line.²⁸ Link L then parts ways with the existing transmission line and follows the County boundary for a distance before jutting north

²² CCLC Brief at 15-16.

²³ *Id.*

²⁴ Tr. at 462 (Sep. 8, 2010).

²⁵ Chalk Mountain Ex. 27 at 3; Direct Testimony of Dan Mayers (“Mayers Direct”), Lone Star Ex. 9 at 29.

²⁶ Vela Direct, Abilene Ex. 1, Attachment C.

²⁷ *Id.*

²⁸ *Id.*

and then east.²⁹ At this point, Link L then crosses two additional transmission lines before paralleling a different 345 kV line for another short distance.³⁰ Link L only then begins paralleling the originally followed 345kV transmission line an additional time.³¹ Finally, Link L must cross this existing transmission line a final time before entering the Central C substation.³² It is no wonder that Lone Star witness Mayers testified that it is “preferable to avoid the number of scheduled outages and coordination issues that would be required to construct those routes crossing Oncor’s line [Routes AC 3, 5, 7, and 9].”³³ Therefore, Routes AC 3, 5, 7, and 9 should not be selected because they pose substantial engineering difficulties due to existing transmission line congestion.

8. Using/Paralleling Existing Compatible Right of Way

CCLC also alleges that Routes AC 5 and AC 7 use and parallel the most amount of compatible right-of-way.³⁴ However, as demonstrated above, Routes AC 5 and AC 7 use a large amount of compatible right-of-way *only* by also crossing a large number of existing transmission lines, causing serious engineering constraints and transmission line congestion. Additionally, CCLC fails to consider Lone Star’s preferred route AC 6, which uses 70.9 miles parallel to existing corridors.³⁵ Routes AC 3, 5, 7, and 9 fail to best meet the Commission’s statutory and regulatory routing criteria. Therefore, they are not the best options for construction of the proposed transmission line along Segment A-C.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Mayers Direct, Lone Star Ex. 9 at 29-30.

³⁴ CCLC Brief at 17.

³⁵ Abilene Ex. 2 at 2.

9. Prudent Avoidance

CCLC attempts to argue that prudent avoidance is not an issue in the case at hand, because Segment A-C has a lower habitable structure range than other CREZ cases.³⁶ CCLC's argument is irrelevant; each project area will necessarily have different ranges of habitable structures. The relevant facts are that of the routes proposed by Lone Star, Route AC 5 has the very most habitable structures within 500 feet of the proposed line.³⁷ CCLC admits this fact.³⁸ As demonstrated in Abilene's Initial Brief, Routes AC 3, 5, 7, and 9 are the worst on habitable structure counts because they have a range of between 31 and 38 habitable structures as compared to Route AC 1's total of 20.³⁹ Finally, considering that the Lake Fort Phantom Hill Development Plan anticipates residential development in the very area that Link L crosses,⁴⁰ the numbers of habitable structures on Routes AC 3, 5, 7, and 9 will increase from their already high habitable structure count. Therefore, Routes AC 3, 5, 7, and 9 do not comply with the Commission's policy of prudent avoidance.

B. Alternative Routes or Facility Configurations

1. Specific Alternatives and Cost (Preliminary Order Issue No. 7)

Not briefed.

2. Landowner Contributions and Effect on Electric Efficiency of the Line and Reliability (Preliminary Order Issue No. 8)

Not briefed.

V. FINANCIAL COMMITMENTS TO BUILD, MAINTAIN, AND OPERATE THE PROPOSED TRANSMISSION LINE

Not briefed.

³⁶ CCLC Brief at 17-19.

³⁷ Abilene Ex. 2.

³⁸ CCLC Brief at 18.

³⁹ Abilene Brief at 8-9.

⁴⁰ Vela Direct, Abilene Ex. 1 at 3 and Attachment B.

VI. TEXAS PARKS AND WILDLIFE DEPARTMENT RECOMMENDATIONS (Preliminary Order Issue No. 11)

CCLC is incorrect to rely on the recommendations of the TPWD. As demonstrated above and in Abilene's Initial Brief, the TPWD based their conclusions on faulty methodology.⁴¹ Therefore, TPWD's comments are not persuasive.

VII. HB 3309 ISSUES

Not briefed.

VIII. CONCLUSION

In conclusion, the proposed transmission line between the Central A to Central C substations should be constructed on a route other than AC 3, 5, 7, or 9. One of the other routes, including the Compromise Route B-E-H-G, should be selected. Those routes better respect the community values of the area and avoid parks and recreational and preserve/refuge areas around Lake Fort Phantom Hill. Those routes also cost less and better comport with the Commission's policy of prudent avoidance. Those routes do not have the engineering constraints passed by Link L. Therefore, the proposed Central A to Central C transmission line should not be constructed on any of Routes AC 3, 5, 7, or 9.

⁴¹ Reference footnote 17.

Respectfully submitted,

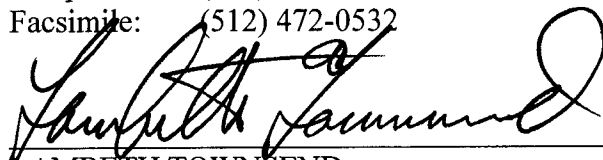
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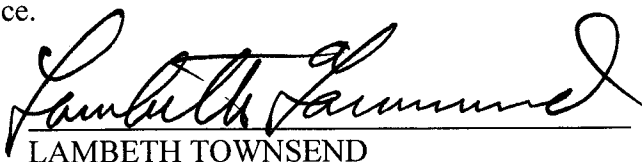
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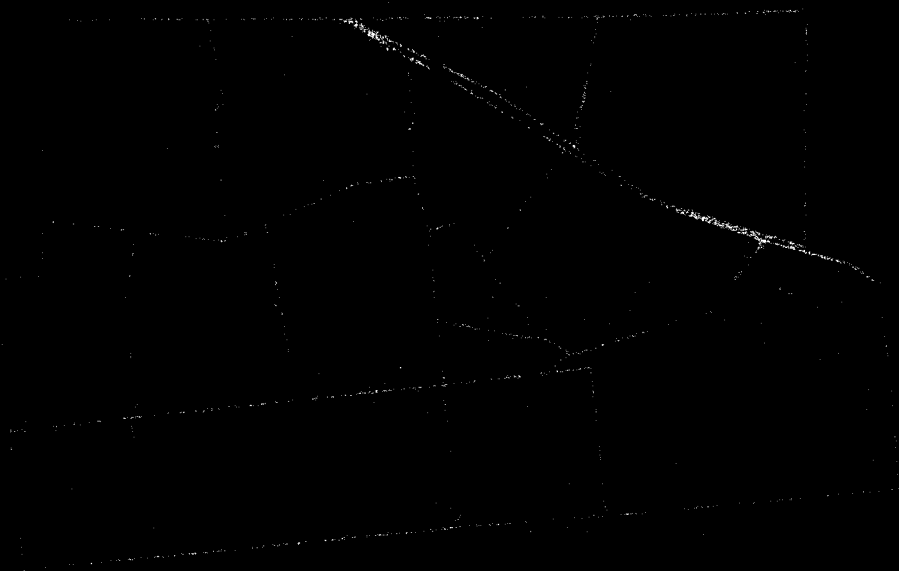
ATTORNEYS FOR CITY OF ABILENE

CERTIFICATE OF SERVICE

I, Lambeth Townsend, hereby certify that on this 5th day of October, 2010, a true and correct copy of the foregoing document is being served in accordance with the orders of the Administrative Law Judge relating to service.



LAMBETH TOWNSEND



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ATTACHMENT
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