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Addendum StartPage: 0

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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
PROPOSED CREZ TRANSMISSION
LINE

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PUBLIC UTILITY COMMISSION
OF TEXAS

**LONE STAR TRANSMISSION, LLC'S
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE PUBLIC
UTILITY COMMISSION OF TEXAS:

Lone Star Transmission, LLC ("Lone Star") submits its Reply to Exceptions to
the Proposal for Decision ("PFD"). Lone Star respectfully shows the following:

I. Introduction

Lone Star stands ready to build any of the lines it has proposed. Routing is a
balancing act among competing, often conflicting criteria. The PFD properly balanced
the competing interests of the many parties. Regardless of the route chosen, Lone Star
reaffirms its commitment to work with landowners to minimize the effect of its
construction and operations on the land and its inhabitants.

Other parties' Exceptions generally focused on three broad issues: wildlife
habitat, habitable structures, and the definition of a "compatible corridor" under P.U.C.
SUBST. R. 25.101 (b)(3). None of the points raised undermine the validity of the PFD or
of Lone Star's Application, and all of the Exceptions ignore that routing is a balancing act
among competing, often conflicting criteria. The PFD properly balanced the competing
interests of the many parties.

1641

First, Lone Star reaffirms that it will survey the chosen routes, take reasonable measures to avoid any potential endangered species habitat that may be identified, consult with the U.S. Fish and Wildlife Service (“USFWS”) about the results of these surveys and, in coordination with USFWS instructions, mitigate and minimize any effects on threatened and endangered species habitat. Lone Star and its affiliates and contractors have experience in dealing with endangered species during construction of transmission lines and will comply with all applicable laws and regulations.

Second, Lone Star has complied with Commission policies on habitable structures and use of compatible corridors. As described in Lone Star’s Application and discussed in the record, no habitable structures are within the right of way of any proposed route and the range of habitable structures within 500 feet of the proposed routes is well within the range of numbers approved in recent CREZ cases. Similarly, Lone Star has followed Commission precedent with regards to paralleling compatible transmission line rights of way and other compatible corridors. Therefore, the Exceptions provide no basis for rejecting the PFD’s conclusions.

II. Potential Endangered Species Habitat on Link RR

The Bosque Property Owners (“BPO”), and other interveners who own property located along Link RR¹, assert that the ALJs improperly discounted the testimony of Dr. John Baccus, who testified that he believes an additional ten miles of potential golden checked warbler (“GCW”) habitat exists beyond what Lone Star identified in its preliminary Habitat Assessment. BPO claims that their members’ potential GCW habitat is similar in quality to that of any other potential habitat on Lone Star’s proposed routes.²

The PFD correctly noted that the potential GCW habitat on Link RR is “more fragmented” than potential GCW habitat on other links and, therefore, is inferior potential

¹ Including Holzem, Rope, Swank, et al., Myers, MMS Ranch, Arnette, and Reed Ranch.

² Exceptions of Bosque Property Owners at 8-9.

habitat.³ The ALJs, in fact, generously assumed the accuracy of Dr. Baccus' assessment of an additional ten miles of potential GCW habitat along Link RR.⁴ This was despite the serious and pervasive flaws inherent in Dr. Baccus' analysis, which the PFD described, such as his spending limited time in the survey area, never leaving his car during the survey, and relying on a "map in his head" for direction.⁵ Additionally, Mr. Van Dyne demonstrated that Dr. Baccus' alleged instances of potential habitat are not actually located along Link RR.⁶

By contrast, Lone Star conducted its Habitat Assessment using a rigorous and tested methodology that was applied uniformly throughout the Project area, and found only 4.7 miles of potential GCW habitat along Link RR.⁷ In arriving at that figure, Burns & McDonnell and its consultant, Horizon Environmental Services, Inc., reviewed detailed aerial photography and flew all the routes in a helicopter with federally permitted biologists experienced in recognizing potential habitat for both GCW and black-capped vireo ("BCV") habitat, frequently hovering at low levels to observe and assess particular areas for potential habitat.⁸ This preliminary Habitat Assessment allowed for the comparison and evaluation of all of Lone Star's alternative routes. This contrasts with individual intervenor assessments that, like BPO's, only viewed small portions of the Project and utilized varied and inconsistent methods to evaluate whether potential GCW and BCV habitat exists on their respective properties.⁹ Moreover, Exceptions that criticize Lone Star for not conducting on-the-ground surveys are wrong; Lone Star, like other utilities, cannot conduct on-the-ground surveys until after the Commission selects a route

³ PFD at 78.

⁴ *Id.* The ALJs were similarly generous in assuming the accuracy of Dr. Baccus' assessment of an additional 8.4 unspecified miles of potential habitat on CSS 249 and 19.3 unspecified miles of potential habitat on CSS 229. PFD at 78.

⁵ The PFD notes numerous criticism of Dr. Baccus' survey methods. PFD at 69.

⁶ PFD at 69-70. A map depicting the Link RR land owner findings is attached as Attachment 1, originally Lone Star Ex. 20 (Van Dyne Rebuttal), Exhibit MAV-R-6.

⁷ Van Dyne Rebuttal at 78-79.

⁸ Van Dyne Rebuttal at 49-50; Lone Star Ex. 23 (Dorsey Rebuttal) at 5-8.

⁹ Dorsey Rebuttal at 8.

and Lone Star is granted access to the affected properties. At that time, Lone Star will conduct on-the-ground surveys to identify potential habitat.

Lone Star has thoroughly demonstrated that it can properly address any issues presented by potential endangered species habitat through avoidance of such habitat and minimization and mitigation of any potential impacts. Considering the overall length of the Project, Lone Star's Habitat Assessment demonstrates that its proposed routes affect only minimal amounts of potential endangered species habitat. Upon the Commission's selection of a route, Lone Star will survey areas with any potential endangered species habitat along the selected route and consult with the USFWS concerning these findings, so as to maintain full compliance with the Endangered Species Act.¹⁰ If Lone Star's surveys confirm the existence of potential and/or occupied habitat, Lone Star will attempt in all such instances to avoid such areas through minor route adjustments. Where habitat cannot be avoided, Lone Star, in consultation with USFWS, will minimize the impact of construction and operation and will mitigate any adverse effects through several means, which may include adoption of a Habitat Conservation Plan and obtaining an incidental take permit. This approach is consistent with longstanding Commission precedent and Texas utility practice.

Additionally, as the PFD correctly notes,¹¹ the Commission has previously selected routes that cross known, occupied endangered species habitat, even in instances where other alternative routes did not cross habitat.¹² And in even more instances, the Commission has selected routes that cross identified potential habitat.¹³ Rather than

¹⁰ Lone Star Ex. 22 (Wynn Rebuttal) at 12; Dorsey Rebuttal at 10-11.

¹¹ PFD at 182 (FOF 182).

¹² See e.g. *Application of West Texas Utilities Company to Amend Its Certificate of Convenience and Necessity for Proposed Transmission Line in Sterling, Coke, Tom Green, Concho, Coleman, and McCulloch Counties*, Docket No. 22798, Final Order at 25 (August 10, 2001) ("there is black capped vireo habitat (vireo habitat) and there are black-capped vireos."); *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for A 138-kV Transmission Line In Kendall And Bexar Counties*, Docket No. 29684, Order On Rehearing at 18, 22 (March 22, 2006) ("Route 3 ...run[s] through Golden Cheek Warbler habitat," and "several known threatened or endangered species along routes 3 and 5, including Golden Cheek Warbler, [are] within the study areas.").

¹³ Docket Nos. 33844, Final Order at 15 (some possibility of affecting potential habitat of the GCW and BCV); *Application of LCRA Transmission Services Corporation for a Certificate of Convenience and*

adopting a bright-line, “no habitat” rule, the Commission has sensibly required utilities to survey the selected route for endangered species habitat and coordinate with regulatory authorities concerning impacts on any endangered species habitat encountered.¹⁴ Lone Star has committed to do so.¹⁵ The Commission has clearly stated that potential impact on endangered species habitat is not a limiting factor, and has included the following language in numerous CCN final orders:

Transmission lines can be constructed to avoid or minimally impact wildlife habitat; therefore, the process of transmission-line construction and operation is not likely to have a negative impact on endangered or threatened wildlife species that could potentially occur in the area of the proposed transmission line.¹⁶

Accordingly, BPO and others have not stated reasonable grounds to warrant rejecting the PFD’s recommendation.

III. Habitable Structures

Some parties took exception with the PFD’s weighing of the number of habitable structures per mile versus the absolute number of habitable structures for the CSS

Necessity (CCN) for a 345-kV Transmission Line In Kendall County, Docket No. 29065, Final Order at 9 (September 26, 2005)(widening of the right of way may affect potential GCW habitat); *Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity for Proposed Transmission Line Within Cooke County*, Docket No. 20516, Final Order at 22 (January 26, 2001) (construction may impact endangered species).

¹⁴ *Application of Electric Transmission Texas, LLC to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Uvalde and Medina Counties*, Docket No. 36978, Final Order at 19 (July 9, 2010); Docket No. 29684, Order on Rehearing at 26; *Joint Application of LCRA Transmission Services Corporation and West Texas Utilities Company for a Certificate of Convenience and Necessity (CCN) for a 138-kV Double-Circuit Transmission Line and a 345-kV Double-Circuit Transmission Line in Tom Green County*, Docket No. 27180, Final Order at 22 (September 26, 2003); *Application of Central Power and Light Company to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line in Bee County*, Docket No. 22286, Final Order at 8 (September 24, 2001).

¹⁵ Wynn Rebuttal at 16.

¹⁶ See e.g. *Application of TXU Electric Delivery Company to Amend a Certificate of Convenience and Necessity (CCN) for a Transmission Line Within Jack, Wise, and Denton Counties*, Docket No. 30168, Final Order at 13 (November 7, 2005); *Application of TXU Electric Delivery Company to Amend a Certificate of Convenience and Necessity (CCN) for a Transmission Line Within Dallas, Johnson, Tarrant, and Ellis Counties*, Docket No. 31011, Final Order at 12 (May 2, 2006); *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 138 kV Transmission Line in Williamson County*, Docket No. 28450, Final Order at 15 (February 11, 2005).

Segment.¹⁷ A number of them also wrongly alleged that Lone Star failed to recognize two habitable structures on Link RR which they contend skewed the PFD's conclusions. These Exceptions are not well taken. As shown below, and as the ALJs correctly found, all of Lone Star's proposed transmission routes affect minimal numbers of habitable structures, and the Commission has previously approved many transmission line routes that affect significant numbers of habitable structures.¹⁸

Lone Star has designed its routes to minimize the number of affected habitable structures.¹⁹ For a 184 mile long line spanning seven counties, the number of affected habitable structures is quite small. No habitable structure is within the right of way of any proposed route. The Exceptions deal with instances in which habitable structures are located up to 500 feet from the proposed centerline of a route. Nevertheless, of course, neither the PUC SUBST. R. 25.101 nor any other PURA or Substantive Rule provision states that a transmission line may not come near or otherwise affect a habitable structure. Instead, relevant authority requires the Commission to evaluate whether a route complies with the policy of prudent avoidance, which is defined as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."²⁰ This policy generally entails attempting to minimize the number of habitable structures affected by a transmission line.²¹ The policy does not, however, forbid routing transmission lines near habitable structures or require avoiding habitable structures at all costs.²² Also, the policy of attempting to avoid habitable structures must be balanced against other interests, such as the desire to maximize the amount of compatible right of way paralleled.

¹⁷ Among them, BPO, Swank, Schaufele, Richards, Myers, MMS Ranch, and Reed Ranch.

¹⁸ Van Dyne Rebuttal at 82.

¹⁹ Lone Star Ex. 9 (Mayers Direct) at 33-35.

²⁰ PUC SUBST. R. 25.101(a)(4).

²¹ Mayers Direct at 33.

²² *Id.*

Several of the exceptions claimed that use of a “habitable structure per mile” metric is “misleading.”²³ A “habitable structure per mile” analysis, however, is a valid means to determine the relative impact of transmission lines that have different lengths and different numbers of habitable structures along them. Far from being misleading, a “habitable structure per mile” analysis is an objective means to evaluate on a consistent basis the impact of a transmission line on two different routes. Also, these claims ignore other positive factors about these routes, such as their favorable amount of paralleling existing compatible rights of way or lower costs. Ultimately, of course, the absolute number of habitable structures is one of the critical facts upon which the Commission will base its final decision. An objective measure such as a habitable structure per mile analysis is a useful tool to aid the Commission in understanding the relative impact of one line versus another on habitable structures.

The number of habitable structures affected by any of Lone Star’s proposed routes is well within the “habitable structure per mile” limits observed by the Commission in recent cases which range from between 0.10 and 2.5 habitable structures per mile with an average of 0.66.²⁴

| Factor | PFD Route CSS249 | Staff Route CSS246 | Preferred Route CSS14 | Maximum CSS CSS16 | Minimum CSS CSS1 |
|---|---------------------------------|-----------------------------------|--------------------------------------|----------------------------------|---------------------------------|
| <i>Number of habitable structures within 500 feet</i> | 112 (0.6/mile) | 103 (0.6/mile) | 85 (0.5/mile) | 133 (0.7/mile) | 84 (0.5/mile) |

Finally, contentions that Lone Star overlooked two habitable structures on Link RR²⁵ are incorrect. These parties misrepresent the substance of the RFI response to which they refer. The question inquired as to “landowners with habitable structures

²³ See BPO, Swank, Schaufele, Richards, Myers, and MMS Ranch.

²⁴ Van Dyne Rebuttal at 82.

²⁵ Exceptions of Bosque Property Owners at 3.

within 500 feet of the preliminary alternative routes” and not to the habitable structures themselves.²⁶ The two habitable structures in question were identified in the Environmental Assessment and the Application, and have always been included in Lone Star’s count of habitable structures. While these landowners were not noticed originally, they were provided notice in accordance with the Commission rule.²⁷ The habitable structure numbers reported by Lone Star and the PFD are correct. There are 112 habitable structures on the 184 mile Route CSS249.

Ultimately, the ALJs’ analysis is sound:

While the ALJs agree with Powell that the number of affected habitable structures is an important consideration, in this particular case, the number of habitable structures per mile is very, very close. Moreover, the ALJs note that Burns & McDonnell did not have access to private property. Thus, the surveys were conducted by visual observations from public roads and ROW and helicopter reconnaissance surveys.²⁸ As noted by a few parties, several structures were not counted as habitable structures. Thus, although the count may be slightly off, the addition or deletion of a few structures will not likely impact the number of structures per mile in a significant manner. The ALJs believe that the average per mile indicates less variance among the routes for the CSS Project.²⁹

IV. Compatible Corridor

Ioni Creek’s continued contentions that a gas pipeline corridor should not be considered as compatible ROW because of the alleged state of the corridor is unpersuasive and no Commission ruling supports Ioni Creek’s view that pipeline corridor should only be considered “compatible” if it meets some additional unstated and subjective criteria.³⁰ Corridors are compatible when burdened by an interest, such as an

²⁶ BPO Ex. 19 (Lone Star’s Response to Yellowbird Ranch’s RFI 3-5).

²⁷ Notice was provided on June 29, 2010 as was attested to in the Supplemental Proof of Notice filed July 2, 1010. Lone Star Ex. 14.

²⁸ Lone Star Ex. 1 (Environmental Assessment and Alternative Route Analysis) at 2-4 to 2-5.

²⁹ PFD at 62.

³⁰ Ioni Creek’s letter to the Commissioners dated October 28, 2010, at 2-4.

easement, that prevents or limits development of structures within the ROW.³¹ Pipeline easements are compatible corridors.³² Focusing on the extent of vegetation clearing to determine whether a pipeline

easement is a compatible corridor misses the point. The pipeline easement holder has the legal right to clear the easement and maintain it,³³ and the easement, which remains in force, prevents the property owner from erecting structures or other developments which would interfere with the use of the easement.³⁴ The Commission has previously held that “[p]aralleling existing pipeline rights-of-way is generally preferable to creating a new corridor.”³⁵ Such a holding is proper and should be made in this case.³⁶

V. *Route “BEHG” is a viable option for Segment AC.*³⁷

Two interveners, Chimney Creek Land Company (“Chimney Creek”) and Darrell N. Ueckert,³⁸ filed exceptions to the ALJs’ recommended route consisting of Links B-E-H-G. As a general matter, Chimney Creek argues that other routes that would not impact the Chimney Creek Ranch are preferable and admits to its own “self-interest” in doing so.³⁹ It generally repeats the arguments made in its Initial Brief, which the ALJs correctly rejected.⁴⁰ Finally, Chimney Creek proposes that Lone Star be ordered to modify this route to follow Chimney Creek’s property boundary if Route BEHG is selected. Lone

³¹ Van Dyne Rebuttal at 31.

³² *Application of TXU Electric Delivery Company to Amend a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line Within Jack, Wise, and Denton Counties*, Docket No. 30168, Final Order at 14 (November 7, 2005).

³³ Tr. at 919.

³⁴ *Id.* at 914-15.

³⁵ Docket No. 30168, Final Order at 14.

³⁶ Indeed, Reed Ranch, in its Exceptions, includes pipelines in its list of “truly compatible corridors.” Exceptions of L.P. Reed Ranch, Ltd., at 4.

³⁷ Segment AC is that portion that connects the Central A Substation to the Central C Substation.

³⁸ Dr. Ueckert’s filed direct testimony was subsequently converted into a Statement of Position when he failed to offer it into evidence or appear for cross examination at the hearing. Tr. at 787.

³⁹ Chimney Creek Land Company, LLC’s Exceptions to PFD at 3.

⁴⁰ PFD at 44-45.

Star's initial cost estimate for this modification, as Lone Star understands Chimney Creek's proposal, is approximately \$3,318,000.⁴¹ Lone Star is certainly willing to undertake this modification should the Commission order it.

Dr. Ueckert takes exception with the ALJs' assessment of community values, environmental impact and cost.⁴² Again, Dr. Ueckert's disagreement with the ALJs does not identify any error, but merely reflects a disagreement with the ALJs' correct assessment of these issues.

VI. Conclusion

Lone Star respectfully requests that the Commission deny the Exceptions to the PFD as discussed herein, enter an order amending Lone Star's certificate of convenience and necessity, and grant such other and further relief to which Lone Star may show itself justly entitled.

⁴¹ This cost estimate is not part of the record since the modification was not proposed until the close of the evidentiary record. It is provided merely to inform the Commission.

⁴² Dr. Ueckert also cites to his testimony to support a point regarding sand erosion. As noted above, Dr. Ueckert's testimony was not admitted into evidence in this proceeding and is not part of the record.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

It is hereby certified notice of the filing of the foregoing has been sent to dkt38230@soah.state.tx.us on this 3rd day of November, 2010, consistent with SOAH Order No. 5.



Chris Reeder

