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PUC DOCKET NO. 38290
SOAH DOCKET NO. 473-10-4790

APPLICATION OF SHARYLAND UTILITIES, L.P. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED HEREFORD TO WHITE DEER 345 KV CREZ TRANSMISSION LINE IN ARMSTRONG, CARSON, DEAF SMITH, OLDHAM, POTTER, AND RANDALL COUNTIES, TEXAS	§ § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**COMMISSION STAFF'S EXCEPTIONS TO THE PROPOSAL FOR
DECISION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files these Exceptions to the Proposal for Decision (PFD).

As directed by the memorandum¹ inviting parties to file exceptions to the PFD, these Exceptions follow the outline of the PFD except that Staff has omitted those sections of the outline for which Staff has no exceptions.

The Administrative Law Judge (ALJ) recommended in her PFD that the Commission should select Sharyland Utilities, L.P.'s (Sharyland) Preferred Route for the proposed Hereford to White Deer 345 kilovolt (kV) Competitive Renewable Energy Zones (CREZ) transmission line project. Staff recommended in testimony and argued in post-hearing briefing that that the Commission should select Staff's recommended route (Route SR). Staff maintains that Route SR is superior to Sharyland's Preferred Route and thus requests that the Commission select Route SR.

In selecting Sharyland's Preferred Route, the ALJ selected a route that is demonstrably inferior to Staff's Route SR in numerous respects when considering all of the routing factors in PURA and the Commission's rules. For instance, Route SR is 77.51 miles long² in contrast to

¹ Memorandum of Stephen Journeay, Commission Advising & Docket Management (November 9, 2010).

² Staff Exhibit 1, Direct Testimony of Kevin Mathis (Mathis Direct), Attachment KM-4 (Sharyland Response to Staff's RFI 1-1 to Sharyland).

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Sharyland's Preferred Route which is 91.16 miles in length.³ In addition, the cost savings of Staff's Route SR are significant. Staff's Route SR is estimated to cost \$172,748,775 in contrast to \$190,503,197 for Sharyland's Preferred Route.⁴ This is a difference of \$17,754,422, which means that the Preferred Route is approximately 10.27% more costly than Route SR. Moreover, approximately 23 percent of Route SR parallels existing compatible right of way and property boundaries.⁵ Only 17 percent of the Preferred Route parallels existing compatible right of way and property boundaries.⁶ Furthermore, the Preferred Route would traverse the Canadian River Basin, an environmental feature which is valued highly by the local community. The Preferred Route would also traverse a cultural resource site which is likely to be eligible for National Register of Historic Places enlistment; Route SR, on the other hand, would not cross any previously recorded cultural resource sites.⁷ The Preferred Route would, moreover, cross 49.94 miles of areas with high archaeological/historical site potential,⁸ whereas Route SR would cross only 29.04 such miles.⁹ Lastly, Route SR scores significantly higher than the Preferred Route on ecological considerations, namely on the basis of miles of right-of-way (ROW) crossing upland woodland/brushland and bottomland woodland/brushland, fewer stream and river crossings, less ROW paralleling streams, and fewer miles crossing 100 year floodplains.¹⁰

IV. ROUTE

A. 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)?

1. Community Values

9. Conformance with the Commission's Policy of Prudent Avoidance

In rejecting Route SR and other route alternatives, the ALJ concluded that the community values reflect very strong opposition to routing the line through south greater Amarillo and

³ Sharyland Exhibit 1a, Errata to Attachment 1 to Sharyland's Application (Revised Environmental Data for Alternative Route Evaluation) (Errata to Attachment 1 of Sharyland's Application).

⁴ Mathis Direct at 38-39.

⁵ *Id.* at 42.

⁶ *Id.*

⁷ *Id.* at 28.

⁸ Errata to Attachment 1 of Sharyland's Application.

⁹ Mathis Direct at Attachment KM-4.

¹⁰ Mathis Direct at Attachment KM-4 and Errata to Attachment 1 of Sharyland's Application.

across the Palo Duro Canyon.¹¹ In reaching this conclusion, the ALJ placed inordinate weight on questionnaire responses received by Sharyland following the four public meetings in assessing the community values criterion. These questionnaire responses indicated some community opposition to routing the line through residential areas. The ALJ did not address, however, the testimony filed by parties to the case describing the community values relating to the environment north of the city in the Canadian River Basin. The ALJ was critical that Staff's Route SR as well as other routes between the city of Amarillo and the Palo Duro Canyon traverse areas with a relatively high number of habitable structures, particularly in the area impacted by Link P. What is more significant, and not discussed by the ALJ in the PFD, is the relative lack of actual opposition to Link P expressed by parties to this docket.

Although the PFD seems to give great weight to the expressions of community opposition to routes in the vicinity of Link P, mostly in the form of public meeting questionnaire responses, it is notable that only four parties intervened in this proceeding whose property would be affected by Link P (Attebury & Rockrose, Mary Emeny, Dampf, and Ronald Moon¹²). Of those four parties, only two actually filed testimony regarding Link P. Among those two parties, one of them, as noted by the ALJ, Mary Emeny, has actually requested that the Commission approve Route 3 or 7, including Link P, which would cross her property.¹³ As to the other, Attebury & Rockrose, the Rockrose Development property would likely be minimally affected by Link P. At the hearing on the merits, Matthew Griffith testified that maps provided by Sharyland showing the apparent property boundaries of the intervenors was incorrect and Rockrose Development only owns the northwestern quarter of the section instead of the western part of the section.¹⁴ This means that instead of Link P running through the middle of the Rockrose property, it would only cross along the southern edge of its property. Moreover, as correctly noted by the ALJ, Rockrose has not done anything with respect to the development of its property along Link P since obtaining approval to develop it in 2004. The Commission has previously determined that future use of property is not a factor to be considered for transmission

¹¹ Proposal for Decision (PFD) at 19.

¹² Ronald Moon was dismissed from this proceeding, pursuant to Order No. 10, for not filing testimony or a Statement of Position.

¹³ Bush/Emeny Exhibit 1, Direct Testimony of Mary Emeny (Emeny Direct) at 11.

¹⁴ Tr. at 755-756.

line routing purposes.¹⁵ Thus any potential future use of Rockrose's property should not be considered in the routing of this transmission line. Even if it were to be considered, the impact could be addressed by adherence to the Commission's standard ordering paragraph requiring the utility to cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the proposed project.¹⁶

The ALJ also erred in not giving sufficient weight to the evidence that routing the line along Link P would not necessarily be incompatible with the community values reflected in the existing and planned development for the City of Amarillo and Randall County. Attebury & Rockrose contended that area through which Link P would be built consists of residential communities with retail development, offices, medical facilities and schools.¹⁷ However, the ALJ failed to recognize that other parties have disagreed with this characterization of the area, describing it as having an industrial feel¹⁸ and being light industrial, commercial and sparsely residential and not being like a residential area in Amarillo.¹⁹ Further, in the ALJ's community values discussion with respect to the Central-Northern lines, the ALJ failed to recognize that there are numerous other existing transmission lines within the immediate vicinity of Link P²⁰ and thus the character of the area would not change significantly if another transmission line were built there. Nor would construction of the line along Route SR be incompatible with the sort of residential development that Rockrose contemplates. Sharyland witness Rob Reid, who has more than 30 years of experience in environmental assessments including those for transmission lines, disagreed that the a transmission line along Link P would be harmful to commercial and residential subdivision development since there are many successful developments in Austin, Dallas and Houston which have lattice and single pole transmission structures routed through them.²¹

¹⁵ *Application of LCRA TSC for a CCN in Kendall and Bexar Counties*, Docket No. 29684, Order on Rehearing at 4 (March 22, 2006).

¹⁶ See North Intervenors Joint Exhibit 4, Cross-Rebuttal Testimony of Harold L. Hughes, Jr. (Hughes Cross-Rebuttal).

¹⁷ Attebury Elevators & Rockrose Development, LLC's Initial Post-Hearing Brief (Attebury & Rockrose Brief) at 9-10.

¹⁸ Emeny Direct at 10.

¹⁹ Tr. at 812.

²⁰ Sharyland Exhibit 1, Application of Sharyland, L.P. to Amend Its Certificate of Convenience and Necessity for the Proposed Hereford to White Deer 345 kV CREZ Transmission Line in Armstrong, Carson, Deaf Smith, Oldham, Potter, and Randall Counties, Texas, Attachment 1, Environmental Assessment and Routing Study, Figure 6-1a; Tr. at 791; Emeny Direct at 5.

²¹ Sharyland Ex. 8, Rebuttal Testimony of Rob R. Reid at 32 (hereinafter "Reid Cross-Rebuttal"); Tr. at 500.

Several of the parties pointed out that Staff Route SR has a high number of habitable structures located within 500 feet of the centerline of the route in comparison to the other route alternatives. The ALJ's decision to reject Staff Route SR appears to rest largely upon this factor.²² Staff's proposed route has 62 such habitable structures, which is the third highest number among all proposed routes.²³ Staff notes, however, that while the number of habitable structures is a significant factor, neither PURA nor the Commission's rules prioritize this factor or any other factor for transmission line routing purposes.²⁴ Moreover, there would only an average of 0.8 habitable structures per mile along Route SR, many of them concentrated along Link P which, as noted above, is already impacted by existing transmission lines which directly relates to the aesthetic and prudent avoidance impacts of Route SR to those structures.²⁵ The ALJ did not account for the length of the line in her habitable structures analysis. Further, it is also notable that *none* of the landowners who have a habitable structure within 500 feet of Link P have intervened in this proceeding.²⁶ While Staff witness Mathis recognized that Staff's Route SR has a relatively high number of habitable structures, Staff Route SR is preferable because of all of its other favorable characteristics as described in Mr. Mathis testimony and in Staff's Initial and reply Briefs. The ALJ's decision overemphasizes the number of habitable structures on Route SR and does not give significant weight to the positive characteristics of Staff Route SR.

4. Environmental Integrity

The ALJ recommends that the final order in this proceeding incorporate a number of recommendations made by the Texas Park and Wildlife Department, which are not included in the Commission's standard ordering paragraphs or in Staff's recommended ordering paragraphs for this docket. Staff opposes these recommendations. The additional proposed ordering paragraphs go well beyond what the Commission has ordered in recent CREZ cases.²⁷ Further, the Commission has previously specifically rejected the recommendation that the utility be

²² PFD at 52 and 55.

²³ This amount excludes the effect, if any, of Eugene Scivally's and James P. Dauphinais' proposed modifications. Mathis Direct at 43; Sharyland Exhibit 1a, Errata to Attachment 1 to Application.

²⁴ Tr. at 737-738.

²⁵ Mathis Direct at 30.

²⁶ Hughes Cross-Rebuttal at 21; Sharyland Application, Attachment 6 (List of Affected Landowners and Habitable Structures).

²⁷ *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 at Ordering Paragraphs 1-14 (October 29, 2010).

required to employ a biological monitor as one of the proposed ordering paragraphs would require.²⁸

Staff's route is superior to the Preferred Route on the basis of ecological factors as the following table illustrates:²⁹

Criterion	Route SR (miles)	Preferred Route (miles)
Length of ROW crossing cropland	26.81	28.89
Length of ROW crossing pastureland/rangeland	49.87	61.11
Length of ROW crossing upland woodland/brushland	0.00	31.26
Length of ROW crossing bottomland/riparian woodland/brushland	0.00	1.51
Length of ROW crossing potential wetlands (excluding playa lakes)	0.00	0.17
Length of ROW crossing known habitat or threatened species	0.00	0.00
Number of stream/river crossings	27	66
Length of ROW paralleling (within 100ft) streams	0.49	0.63
Length of ROW crossing open water (playa lakes, ponds, etc.)	1.77	0.40
Number of playa lakes crossings	10	3
Length of ROW crossing 100 year floodplains	3.60	3.87

5. The Effect of Granting the Certificate on the Ability of This State to Meet the Goal Established by Section 39.904(a)

Pursuant to PURA § 37.056(c)(4)(F), the Commission is required in a CCN case to consider “to the extent practicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this Title.” PURA § 39.904(a) relates to the

²⁸ *Id.* at FOF 102.

amount of renewable energy generation capacity for the state to achieve by specified dates. The ALJ agreed with Sharyland that the location of wind farms can be considered a transmission line routing criterion under PURA § 39.904(a).³⁰ Staff maintains that this statutory provision is not applicable because the current amount of renewable generation installed in Texas is greater than what the current target amount is under PURA § 39.904(a). As Hal Hughes, testifying on behalf of Seewald Ranch, Masterson & Stinnett Ranch, and Bush/Emeny Properties, stated at the hearing, there is currently more than the 5,800 megawatts of installed generation capacity in Texas, which under PURA § 39.904(a), is the targeted level of renewable generation to be installed in Texas by January 1, 2015.³¹ Thus, PURA § 37.056(c)(4)(F) is not applicable because the “goal established by Section 39.904(a)” has been met.

Further, even if the provision were applicable, Staff believes that PURA § 37.056(c)(4)(F) simply requires that the Commission to consider whether the granting of a certificate would further the overall purpose of the Legislature’s Goal for Renewable Energy. An integral component of that goal is the CREZ project, which in the most general terms is a project dedicated to ensuring that renewable energy that located in West Texas and in the Texas Panhandle is conveyed to the large population centers in the central and eastern parts of the state. PURA § 37.056(c)(4)(F)’s reference to the legislative goal for establishing renewable energy targets evidences a more general, higher-level legislative prerogative than whether a specific CREZ transmission line should be routed in such a way as to benefit specific wind developers as parties in this case have contended. Sharyland’s proposed line in this case would further the legislative goal of meeting the stated renewable energy targets because it will bring remotely located energy to the population centers which use that electricity regardless of the specific details regarding its routing and location relative to wind farms.

CONCLUSION

Staff requests that the Commission reject the ALJ’s recommendation that Sharyland’s Preferred Route should be selected for the proposed Hereford to White Deer 345 kV CREZ project and instead select Staff’s recommended Route SR because it best satisfies the routing criteria in PURA § 37.056(c)(4) and P.U.C. SUBST. R. 25.101(b)(3)(B).

²⁹ The data is compiled from information contained in Staff witness Kevin Mathis’s Direct Testimony at KM-4 and Errata to Attachment I of Sharyland’s Application.

³⁰ PFD at 39.

³¹ Tr. at 1155-1157.

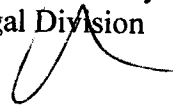
Dated: November 17, 2010

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 17th day of November, 2010 in accordance with P.U.C. Procedural Rule 22.74.



Brennan J. Foley