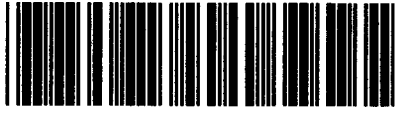




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**SOAH DOCKET NO. 473-10-4790
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 PUBLIC UTILITIES COMMISSION

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	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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FREMANTLE’S REPLY TO EXCEPTIONS

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FREMANTLE’S REPLY TO EXCEPTIONS

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS AND THE HONORABLE ADMINSTRATIVE LAW JUDGE SHANNON KILGORE:

Fremantle Energy, LLC (“Fremantle”) files this Reply to the Exceptions (“Reply”) filed by Southwestern Public Service Company (“SPS”), Bush Emeny Properties and Seewald Ranch, Masterson & Stinnett Ranch, and the Commission Staff (“Staff”) in this docket.

In support of its Reply, Fremantle will show that the State Office of Administrative Hearings (“SOAH”) Administrative Law Judge (“ALJ”) appropriately interpreted and applied the statutes in rendering the Proposal for Decision (“PFD”) recommending the adoption of the Preferred Route 1 (the “Preferred Route 1” or “PR”) in this docket. The PFD comprehensively addresses the issues presented in this proceeding and is well-written and well-reasoned. The Exceptions brought forward by the various parties to this proceeding are without merit and should be rejected. For the reasons discussed below, Fremantle respectfully requests that the Public Utility Commission (the “Commission” or “PUC”) adopt the ALJ’s PFD, incorporating Sharyland’s slight corrections filed on November 16, 2010, in issuing its final order in this proceeding.

I. OVERVIEW¹

The PFD properly balances the statutory factors set forth in the Public Utility Regulatory Act² in selecting the Preferred Route 1 for the Hereford to White Deer 345 kV CREZ Transmission Line (the “Transmission Line”). In this case, the ALJ found that the Preferred Route 1 is the best route for the following reasons:

- it has minimal impact on habitable structures as it travels through large expanses of open rangeland;
- it avoids routing through the environmentally sensitive Palo Duro Canyon area and the high population growth areas on Link P between the Cities of Amarillo and Canyon;
- it presents no significant engineering constraints, avoids a canyon crossing, and Sharyland and SPS have agreed to manage all technical matters in a cooperative manner; and
- it provides substantial micro-routing flexibility as it primarily runs through rangeland.

After hearing the extensive testimony and evidence brought forward by the many parties to this proceeding and reviewing both initial briefs and reply briefs, the ALJ correctly determined that the Preferred Route 1 best balances the statutory routing criteria as a whole. It complies with the Commission’s policy of prudent avoidance and avoids crossing the Palo Duro Canyon.

Finally, the evidence in the record also demonstrates that Route 1 will lead to the most cost-effective and beneficial manner of bringing wind generation to ERCOT customers. This is because the best wind resources are located to the northeast and northwest of Amarillo, and only the northern routes allow access to these areas. Route 1 will lower the cost of interconnecting

¹ In accordance with the ALJ’s instructions, Fremantle’s Reply follows the outline of the PFD in responding to the Exceptions filed by other parties.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007 and Supp. 2010) (“PURA”).

wind projects in the northwest of the Panhandle A CREZ without discriminating against projects in other areas of the CREZ. Adoption of the Preferred Route 1 will allow the interconnection of new sources of wind generation in the Panhandle A and B CREZs with the ERCOT grid in the most cost-effective and beneficial manner to consumers.

IV. PRELIMINARY ORDER ISSUES

F. Preliminary Order Issue No. 6.

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

In their Exceptions, certain parties erroneously argue against the ALJ's determination that the Preferred Route 1 will best minimize impact on community values by avoiding crossing the high population areas and Palo Duro Canyon south of Amarillo.³ The record is replete with substantial testimony and evidence regarding the general preference of the public to avoid running this 345 kV transmission line through highly populated areas. Comments made at the Sharyland open houses expressed a strong preference to keep the Transmission Line away from residential areas,⁴ and the greatest concerns at the public meetings were in regards to the routes that cross Palo Duro Canyon (the southern routes) and the routes running between Amarillo and Canyon (the middle routes).⁵ Randall County Judge Ernie Houdashell testified that he is "very concerned about anything in Randall County,"⁶ and that significant growth is expected in the

³ Bush Emeny Properties' and Seewald Ranch's Exceptions to the Proposal for Decision at 4-7 (Nov. 17, 2010); Masterson & Stinnett Ranch's Exceptions to the Proposal for Decision at 7-20 (Nov. 17, 2010); Exceptions of Southwestern Public Service Company at 5-7 (Nov. 17, 2010).

⁴ Cross-Rebuttal Testimony of Thomas Houle, Fremantle Ex. 3 at 5.

⁵ Direct Testimony of Mark E. Caskey, Sharyland Ex. 2 at 12, Sharyland's Application, Sharyland Ex. 1 at 415; Tr. at 70, 82.

⁶ Tr. at 785-86.

area between Amarillo and Canyon where the middle routes cross.⁷ Most of this growth is expected to be residential communities with schools, retail, and office space.⁸

Looking at this statutory factor alone, the ALJ correctly found that the Preferred Route 1 provides an excellent choice for avoiding residential areas. It runs through open cropland and rangeland that is undeveloped.⁹ Further, there is no evidence in the record that the areas northwest, north, and northeast of Amarillo are expected to be areas of population growth. The ALJ correctly found that “[o]verall, the balance of evidence on this issue indicates that the Northern corridor, and in particular the PR, is a more advantageous transmission line path with respect to this factor than are the south greater Amarillo and Palo Duro Canyon routes.”¹⁰

2. Recreational and Park Areas

Bush Emeny Properties and Seewald Ranch, SPS, and Masterson & Stinnett Ranch all argue that the ALJ did not properly analyze the statutory factor regarding recreational and park areas.¹¹ While they go to great lengths to argue what should and what should not be considered a recreational area for purposes of this statutory factor, the evidence clearly supports the conclusion of the ALJ that, in contrast to most of the other routes, “the PR, a Northern route, does not pass in proximity to any recreational area.”¹²

3. Historical and Aesthetic Values

As with community values, landowners along each route claim a negative aesthetic and historical impact from the Transmission Line. The northern landowners disagree with the ALJ’s

⁷ Rebuttal Testimony of Ernie Houdashell, Attebury/Rockrose Ex. 5 at 4-6.

⁸ *Id.* at 5.

⁹ Direct Testimony of Rob E. Reid, Sharyland Ex. 4 at 19; Rebuttal Testimony of Don L. Mundy, Sharyland Ex. 6 at 5-6.

¹⁰ Proposal for Decision at 19 (Nov. 9, 2010).

¹¹ Bush Emeny Properties’ & Seewald Ranch’s Exceptions at 7-8; Masterson & Stinnett Ranch’s Exceptions at 21; SPS’s Exceptions at 8-10.

¹² PFD at 21.

assessment that no route is a more favorable route because each will have an aesthetic impact.¹³ Aesthetic impact claims are particularly valid in response to the southern routes, which will cross the Palo Duro Canyon, a historic and beautiful location regularly touted as one of the most scenic places in the entire state that has a significant amount of tourism, even outside of the state park.¹⁴ Judge Houdashell stated his opposition to a route that would cross the Palo Duro Canyon.¹⁵ He also testified about the negative impact Route 12 will have on Highway 207, which has been designated as a Texas scenic highway.¹⁶

PBS&J did not locate any archaeological sites within 1,000 feet of the Preferred Route 1 and only located one site eligible to be listed on the National Register of Historic Places.¹⁷ Sharyland testified that it can mitigate any potential damage to this site and any other currently unknown sites by minor route deviations through the open rangeland once the route is determined, which is common practice for utility companies.¹⁸ This type of micro-siting will allow Sharyland to address any concerns along the Preferred Route, but no amount of micro-siting will mitigate the impact of a transmission line crossing the Palo Duro Canyon.

The northern landowners claim a negative aesthetic impact from the Transmission Line crossing their property, but they already have transmission lines on their ranches.¹⁹ In its Exceptions, Masterson & Stinnett Ranch says that crossing the north Palo Duro Canyon is not so

¹³ Masterson & Stinnett Ranch's Exceptions at 21-22; Bush Emeny Properties' & Seewald Ranch's Exceptions at 8-9.

¹⁴ Direct Testimony of Kevin Mathis, Staff Ex. 1 at 18; Direct Testimony of Susan M. Rogers, Currie Family Interests Ex. 2 at 6; Direct Testimony of Mary Corrigan, Protect North Palo Duro Canyon Ex. 1 at 4-6; Direct Testimony of Greg White, Protect North Palo Duro Canyon Ex. 2 at 6.

¹⁵ Tr. at 780-781.

¹⁶ *Id.* at 780.

¹⁷ Reid Direct, Sharyland Ex. 4 at 23.

¹⁸ Rebuttal Testimony of Rob E. Reid, Sharyland Ex. 8 at 7.

¹⁹ Direct Testimony of William H. Seewald, Seewald Ex. 1 at 4, 8; Direct Testimony of Mary Emeny, Bush/Emeny Ex. 1 at 6-7, 9; Direct Testimony of Beaumont S. Boyce, Masterson & Stinnett Ranch Ex. 1 at 8.

bad because there are already power lines in the vicinity.²⁰ Bush Emeny Properties and Seewald Ranch and the Staff also argue that power lines in the vicinity of the middle routes mean that those are good locations for additional lines.²¹ The record shows that Ms. Emeny has signed a 7,600 acre wind lease that would have allowed Cielo to construct wind turbines throughout that section of her ranch.²² It is disingenuous for her to now claim that she does not want a transmission line to cross her ranch when she was willing to allow Cielo to build numerous wind turbines and associated transmission line and other infrastructure across her property. Ms. Emeny was clearly willing to allow a significant amount of infrastructure on her land. All of the facts related to the Preferred Route 1 indicate that it is an appropriate route from a historical or aesthetic perspective.

4. Environmental Integrity

Potential environmental issues exist on all of the routes.²³ The northern landowner intervenors argue that the environmental issues on their property are more significant than those on other routes.²⁴ However, the Preferred Route 1 is not expected to adversely impact any known populations of federally-listed endangered or threatened wildlife species, and construction will cause only short-term impacts to soil, water, and ecological resources.²⁵ Sharyland has committed to comply with all environmental rules and regulations in constructing the Transmission Line,²⁶ and Sharyland will follow mitigation measures to reduce any potential

²⁰ Masterson & Stinnett Ranch's Exceptions at 22.

²¹ Bush Emeny Properties' & Seewald Ranch's Exceptions at 9; Commission Staff's Exceptions to the Proposal for Decision at 26 (Nov. 17, 2010).

²² Tr. at 1011-12; Attebury/Rockrose Ex. 26.

²³ Mathis Direct, Staff Ex. 1 at 34.

²⁴ Masterson & Stinnett Ranch's Exceptions at 22-28; Bush Emeny Properties' & Seewald Ranch's Exceptions at 9-14.

²⁵ Reid Direct, Sharyland Ex. 4 at 24.

²⁶ Rebuttal Testimony of Mark E. Caskey, Sharyland Ex. 5 at 12.

adverse effects of constructing and operating the transmission line.²⁷ Sharyland will conduct cultural and biological surveys and follow both an Environmental Management Plan and a Storm Water Pollution Prevention Plan.²⁸ In addition, the PFD proposes a variety of precautions to address any potential environmental issues that may arise during the construction of the Transmission Line. All of these mitigation activities make the Preferred Route 1 acceptable from an environmental perspective.

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

In the PFD, the ALJ correctly found that “the location of wind generation can be a relevant consideration in a CREZ docket.”²⁹ Several parties take direct dispute with this determination by the ALJ and claim that the statutory factor set forth in PURA Section 37.056(c)(4)(F) is somehow wholly inapplicable to this proceeding because the renewable portfolio standard has already been met, and therefore that the Commission should not consider related factors such as proximity to wind development in routing the Transmission Line.³⁰ Interestingly, while noting that the “Northern routes *may* ultimately prove to be the most advantageous locations for maximizing the project’s access to interconnecting wind generators,” the ALJ still recommends the Preferred Route 1 without relying on this factor.³¹

While the ALJ did not rely on accessibility to wind as a factor for supporting the adoption of the Preferred Route 1, Fremantle believes that, contrary to the arguments of certain parties in their Exceptions, the Preferred Route 1 will encourage the interconnection of new sources of wind generation in a cost-effective manner. The Preferred Route 1 runs through the best areas

²⁷ Sharyland’s Application, Sharyland Ex. 1 at 275-76, 373-91; Reid Direct, Sharyland Ex. 4 at 24; Caskey Rebuttal, Sharyland Ex. 5 at 10.

²⁸ Caskey Rebuttal, Sharyland Ex. 5 at 9, 12-13.

²⁹ PFD at 39.

³⁰ See, e.g., Staff’s Exceptions at 6-7.

³¹ PFD at 42.

for wind development in the Panhandle area, as demonstrated by wind resource maps, FAA permitting for existing and future wind developments, and current interconnection requests made to Sharyland. It is clear from Mr. Caskey's testimony that significant wind development is occurring in the areas to the northeast and northwest of Amarillo in Panhandle A and B.³²

The Transmission Line in this proceeding represents the only chance to bring a 345 kV bulk collection line into the northern and western-most parts of the Panhandle A CREZ.³³ Projects in Oldham, Potter, western Carson, and northern Deaf Smith Counties (such as Fremantle's Canadian Breaks Project) have no CREZ interconnection options other than the Hereford to White Deer line. As the route for the Transmission Line moves farther south, the length of the line needed to interconnect any project from the northern areas increases. The cost of each of these necessary interconnection lines is estimated at \$800,000 per mile for a 138 kV line or \$1-1.2 million per mile for a 345 kV interconnection line.³⁴ The estimated cost to construct a 30+ mile interconnection line from the Canadian Breaks Project alone would outweigh the temporary savings from utilizing a marginally shorter route for the Transmission Line. The cumulative cost of longer lines from new wind generation sources in the north will overwhelm any savings that are accomplished by selecting a route other than the Preferred Route 1.³⁵ ERCOT customers will be adversely affected by increased costs resulting from the selection of a middle or southern route. The Preferred Route 1 is the most cost-effective route for ERCOT ratepayers.

³² Tr. at 1231, 799.

³³ *Id.* at 621.

³⁴ *Id.* at 233, 627; Caskey Rebuttal, Sharyland Ex. 5 at 8; Houle Cross-Rebuttal, Fremantle Ex. 3 at 9.

³⁵ Houle Cross-Rebuttal, Fremantle Ex. 3 at 10.

It would be wholly illogical at this last stage of the CREZ process to ignore the clear intent and final orders of the Commission in prior CREZ proceedings.³⁶ To discourage the development of new wind generation in the northwestern part of Panhandle B and the northern and western parts of Panhandle A, which are well known to possess superior wind resources, by making it more difficult for such generation to interconnect with the ERCOT grid because the northernmost CREZ Transmission Line in the area is routed too far to the south to allow timely and cost-effective interconnection, would defeat the core purpose of the CREZ process.

Opponents of the Preferred Route 1 erroneously claim that it discriminates against southern wind developments and that Route 12 should be selected.³⁷ In fact, Route 12 unduly discriminates against the northern wind developments, while the Preferred Route does not discriminate against southern wind developments at all. As noted above, wind projects in the northern and western portions of Panhandle A have no CREZ interconnection options other than the Hereford to White Deer line. The Preferred Route 1 clearly gives northern and western wind developers CREZ interconnection options they would not otherwise have, while southern and eastern wind developers have several CREZ interconnection options.³⁸ Only selection of the Preferred Route 1 will avoid discrimination against any set of wind developers.

6. Engineering Constraints

In its Exceptions, SPS raises concerns about potential crossings of SPS transmission lines and other engineering constraints.³⁹ The ALJ correctly found in the PFD that “all routes in all corridors have some engineering challenges but would be feasible.”⁴⁰ Sharyland has committed

³⁶ See *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008).

³⁷ See, e.g., Direct Testimony of Harold L. Hughes Jr., North Intervenor Joint Ex. 1 at 13.

³⁸ Caskey Rebuttal, Sharyland Ex. 5 at 8; Houle Cross-Rebuttal, Fremantle Ex. 3 at 8.

³⁹ SPS's Exceptions at 13-16.

⁴⁰ PFD at 43.

to working with SPS to resolve any potential issues, as evidenced by the letter agreement executed between the two companies.⁴¹ Utilities routinely build transmission lines in close proximity to one another, and these issues are routinely resolved successfully when the two companies work together.⁴² The PFD is correct in concluding that the record demonstrates that “on balance, the Northern routes are favorable from a construction standpoint because they cross terrain predominantly in use as range and crop land in generally undeveloped areas, they do not involve major canyon crossings, and they do not involve construction of a line in a congested area with traffic, multiple buildings, and various concentrated human activities.”⁴³

7. Costs

Several parties argue that the Preferred Route 1 should not be selected because it is more expensive than some of the other proposed routes.⁴⁴ However, the benefits of Route 1 in avoiding habitable structures, avoiding a crossing of the Palo Duro canyon, and generally complying with community values support the selection of a more expensive route. Further, as explained above, the additional cost of the Preferred Route 1 will be easily offset by the reduced costs of interconnecting even just one or two wind farms in the northwestern parts of Panhandle A and B, so that from a practical standpoint, the adoption of the Preferred Route 1 will actually reduce the ultimate cost of interconnecting new sources of wind generation in the Panhandle.

⁴¹ See Sharyland Ex. 11; *see also* Caskey Rebuttal, Sharyland Ex. 5 at 23; Tr. at 223, 231-32.

⁴² Caskey Rebuttal, Sharyland Ex. 5 at 27; Tr. at 223, 229.

⁴³ PFD at 43.

⁴⁴ SPS's Exceptions at 4; Bush Emeny Properties' & Seewald Ranch's Exceptions at 22; Staff's Exceptions at 2; Masterson & Stinnett Ranch's Exceptions at 30.

8. Existing Compatible ROW and Property Lines or Other Natural or Cultural Features

The three northern intervenor ranches complain that the Preferred Route 1 does not follow compatible ROW,⁴⁵ but they have refused to work with Sharyland on any alternative routing to mitigate their concerns. The northern routes rank 2nd, 3rd, and 4th in total length of property boundaries and existing, compatible right-of-way paralleled by the proposed routes.⁴⁶ The Preferred Route 1 follows existing corridors for 44% of its length.⁴⁷ Further, Sharyland has committed to working with landowners to design and construct the Transmission Line in a manner that minimizes the impact on landowners.⁴⁸ Fremantle and Pattern are confident about Sharyland's commitment to do so, and that is why they support the Preferred Route 1, even though it would likely run very close to potential turbine sites.⁴⁹

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

The Commission's policy of prudent avoidance clearly recommends avoiding any of the middle routes because they cross between 54 and 75 habitable structures whereas the Preferred Route 1 crosses near only 5 habitable structures.⁵⁰ In recent CREZ CCN proceedings, the Commissioners have expressed concerns about routes that cross large numbers of habitable structures.⁵¹ Masterson & Stinnett Ranch argues that the policy of prudent avoidance only requires reasonable efforts and costs to avoid habitable structures.⁵² However, when such a large difference in number of habitable structures arises between routes, it is an obvious choice for the

⁴⁵ Masterson & Stinnett Ranch's Exceptions at 31-33; Bush Emeny Properties' & Seewald Ranch's Exceptions at 22-25.

⁴⁶ Mathis Direct, Staff Ex. 1 at 41.

⁴⁷ *Id.*

⁴⁸ Caskey Rebuttal, Sharyland Ex. 5 at 9, 11, 17; Tr. at 44, 48.

⁴⁹ Direct Testimony of Thomas Houle, Fremantle Ex. 1 at 13; Direct Testimony of Glen Hodges, Pattern Ex. 1 at 8.

⁵⁰ See Mathis Direct, Staff Ex. 1 at 29.

⁵¹ See, e.g., *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345 kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet and Lampasas Counties*, Docket 37448, Chairman Smitherman Memorandum (Jun. 11, 2010).

⁵² Masterson & Stinnett Ranch's Exceptions at 33-34.

Commission to select the route that crosses significantly fewer habitable structures when it is an otherwise compliant route. The Preferred Route clearly complies with the statutory criteria, and it should be selected over all of the middle routes in order to comply with the Commission's policy of prudent avoidance.

10. ALJ's Routing Analysis

Some parties argue that the ALJ selected the Preferred Route 1 because of an improper weighting toward community values.⁵³ That position is not supported by the detailed considerations set forth in the PFD. The ALJ's decision clearly weighs all of the statutory and regulatory factors and correctly concludes that the Preferred Route 1 "best meets the statutory and regulatory criteria."⁵⁴ Taking all of the statutory and regulatory factors into consideration, and based on the significant evidentiary record developed by Sharyland and the other parties to this proceeding, the Commission should adopt the PFD and grant Sharyland's application for a CCN to construct the Transmission Line along the Preferred Route 1.

PRAYER

Fremantle respectfully requests that the Commission: (1) reject all of the Exceptions brought forward by SPS, Bush Emeny Properties and Seewald Ranch, Masterson & Stinnett Ranch, and the Staff; and (2) adopt the Proposal for Decision and proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs set forth therein, subject to the slight corrections suggested by Sharyland on November 16, 2010.

⁵³ Bush Emeny Properties' & Seewald Ranch's Exceptions at 3.

⁵⁴ PFD at 55.

Date: November 23, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been emailed, hand-delivered, sent overnight mail or sent U.S. mail to all parties of record on the 23rd day of November, 2010.



Michael J. Tomsu

