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

APPLICATION OF SHARYLAND §
UTILITIES, L.P. TO AMEND ITS § BEFORE THE STATE OFFICE
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR THE §
HEREFORD TO WHITE DEER § OF
345-KV CREZ TRANSMISSION LINE §
(FORMERLY PANHANDLE AB TO §
PANHANDLE BA) IN ARMSTRONG, §
CARSON, DEAF SMITH, OLDHAM, §
POTTER AND RANDALL COUNTIES § ADMINISTRATIVE HEARING

CURRIE FAMILY INTERESTS,
NORTHWINDS RANCH,
PROTECT NORTH PALO DURO CANYON,
RIVER FALLS PROPERTY OWNERS ASSOCIATION,
AND RABAH RESOURCES, LTD.

REPLIES TO
EXCEPTIONS TO THE
PROPOSAL FOR DECISION

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

APPLICATION OF SHARYLAND UTILITIES, L.P. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE HEREFORD TO WHITE DEER 345-KV CREZ TRANSMISSION LINE (FORMERLY PANHANDLE AB TO PANHANDLE BA) IN ARMSTRONG, CARSON, DEAF SMITH, OLDHAM, POTTER AND RANDALL COUNTIES	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**CURRIE FAMILY INTERESTS, NORTHWINDS RANCH,
PROTECT NORTH PALO DURO CANYON,
RIVER FALLS PROPERTY OWNERS ASSOCIATION,
AND RABAH RESOURCES, LTD.'S
REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Currie Family Interests, Northwinds Ranch, Protect North Palo Duro Canyon, River Falls Property Owners Association, and Rabah Resources, Ltd. (all Intervenors jointly herein referred to as “CFI” for ease of reference), supports the Administrative Law Judge’s (“ALJ”) recommendation of Route 1 as the route that best meets the Public Utility Commission’s (“PUC” or “Commission”) routing criteria for this project. CFI files these replies to exceptions of other intervenor parties in this proceeding filed November 17, 2010.

I. INTRODUCTION

The ALJ correctly concluded that Route 1 is the “most reasonable and supportable” choice when all of the criteria are balanced. Route 1 follows a substantial amount of right-of-way, complies with the Commission’s policy of prudent avoidance, avoids substantial engineering constraints in the study area, preserves the environmental integrity of the North Palo Duro Canyon, and best addresses the substantial amount of concern expressed by the community throughout the study area.

II. 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

The contemplation of community values is an integral part of the CCN process. In this case, the ALJ properly weighed the various expressions of community values from individuals through the entire study area. Several parties take issue with the ALJ's determination that there was a stronger expression of community values opposing use of the Central-North and Central-South corridors.¹ However, based on the evidence in the record, the ALJ correctly concluded that there was a substantial amount of community opposition to the North Palo Duro Canyon routes as compared to the northern routes.² As addressed in CFI's Limited Exceptions to the Proposal For Decision ("PFD"), CFI is concerned that comments filed by individuals as well as those of public officials may be elevated to the status of evidence in this proceeding due to references in the PFD. Accordingly, CFI agrees with Masterson and Stinnett Ranch ("M&SR"), and Bush Emeny Properties & Seewald Ranch ("Bush/Emeny") that an excessive amount of weight was placed on these extra-record statements.³

Bush/Emeny claims that the community values criteria was permitted to trump all of the other routing criteria in this proceeding.⁴ However, Bush/Emeny points to no statement in the PFD to support this naked assertion. While community values were certainly an important factor in this proceeding, all of the criteria were individually analyzed and weighed in the lengthy PFD. Both Bush/Emeny and M&SR claim that there was substantial opposition to the northern routes expressed in this proceeding. However, in attempting to support this statement, they point to a

¹ PFD at 9.

² PFD at 9; M&SR Exceptions at 7.

³ M&SR Exceptions at 19; Bush/Emeny Exceptions at 6-7.

⁴ Bush/Emeny Exceptions at 3.

number of comments that were not part of the evidentiary record in this proceeding, while at the same time complaining that the ALJ considered other comments that were also not in the record.⁵ Bush/Emeny and M&SR inconsistently argue that comments filed in this docket should not be considered, while also arguing that the comments received in Project No. 37138 opposing a northern route should have been considered by the ALJ.⁶ But, they cannot have it both ways.

The form used by individuals filing comments in all CREZ CCN proceedings clearly indicates that the comments would not be considered as evidence. No comments filed at the Commission are to be considered evidence in any proceeding; therefore, Bush/Emeny's challenge to the ALJ's count of filed comments is irrelevant. Bush/Emeny, in an apparent attempt to limit the impact of the petition, notes that the Protect North Palo Duro Canyon ("PNPDC") petition submitted by CFI was also filed in Project No. 37138. However, Bush/Emeny fails to note that the PNPDC petition was also properly introduced into evidence at the hearing, *without objection*.⁷ When the petition was filed with the Direct Testimony of Susan M. Rogers, there were 1,591 signatures on the petition, a number that continues to grow as time passes.⁸

M&SR also attempts to trivialize the number of signatures on the PNPDC petition by claiming that it is uncertain whether all of those who signed the petition were opposing the crossing of the North Palo Duro Canyon, or only the State Park.⁹ Obviously, M&SR did not take the time to look at the petition before making this erroneous assertion. The petition plainly states

⁵ M&SR Exceptions at 19-20.

⁶ Bush/Emeny Exceptions at 5; M&SR Exceptions at 19-20.

⁷ Direct Testimony of Susan M. Rogers, CFI Ex. 2, Attachment J.

⁸ An examination of the website of Protect North Palo Duro Canyon (www.protectcanyon.com) on November 22, 2010, revealed that there are currently 1,626 signatures.

⁹ M&SR Exceptions at 10. M&SR's only citation for this erroneous allegation is the Initial Brief of Attebury and Rockrose at 11. This statement was wrong when Attebury and Rockrose first made it, and it continues to be wrong when repeated by M&SR in its Exceptions.

that the signatories are seeking to prevent “Sharyland Utilities from placing a transmission line across that portion of Palo Duro Canyon lying north of the Palo Duro Canyon State Park and south and east of Lake Tanglewood in Randall County, Texas.”¹⁰ The opposition to the lines in the area indicates that the community does not want the lines to cross the Palo Duro Canyon in any area, whether public or private, and *specifically* the area north of the Palo Duro Canyon.

M&SR makes multiple unsupported claims that the landowners in the North Palo Duro Canyon area are concerned more about their financial interests than preserving the Canyon.¹¹ While CFI does have a financial interest in the outcome of this proceeding, as does M&SR and every other intervenor in this proceeding, the various intervenors making up CFI have also been “good stewards of the land” just as M&SR claims it has been.¹² Mr. Tully Currie’s testimony expressed his concern for the properties of everyone near the Canyon, such as Lake Tanglewood and River Falls. All of the development that has taken place on the caprock of the Canyon has been planned and carefully managed with comprehensive land use controls and deed restrictions. Furthermore, the Red River Refuge has forever been set aside and protected from spoilation through the legal entities created by Mr. Tully Currie, as well as the restrictions placed on its use.¹³

It is simply wrong for any landowner in this proceeding to claim that CFI’s sole interest in this proceeding is financial. This land has been in the Currie family since the early 1900’s and many members of the Currie family continue to cherish the countless memories from growing up in the North Palo Duro Canyon area.¹⁴ They are concerned with preserving the beautiful

¹⁰ See <http://www.gopetition.com/petitions/protect-north-palo-duro-canyon.html>.

¹¹ M&SR Exceptions at 3, 11.

¹² M&SR Exceptions at 3.

¹³ Direct Testimony of Tully R. Currie, CFI Ex. 1 at 7, Attachments D, E.

¹⁴ See Direct Testimony of Tully R. Currie, CFI Ex. 1 at 8-9; Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 7-8.

property that has been in their family for generations. One has only to review the testimonies presented by Susan Rogers, Ginger Green, Tully Currie, Jim Currie, Greg White, and Mary Corrigan to understand the non-monetary value of the Canyon to these landowners. Joint North Intervenors' witness Mr. Hughes' assertion that the property owners on the North Palo Duro Canyon intend to develop up to the rim of the Canyon has been shown to be overly-broad and perhaps intentionally misleading.¹⁵

Going further, M&SR makes the extremely cynical statement that if the Curries wanted to save the North Palo Duro Canyon, they should donate the land to the State Park.¹⁶ In making that suggestion, M&SR again asserts that the Curries are unable to be "good stewards of the land" as M&SR claims they themselves are. The same assertion could be made of the Canadian Breaks: if M&SR is so concerned with preserving the natural beauty, then they should also donate their land to be a state park. It is absurd and the height of callousness to assert that the only way to save the North Palo Duro Canyon, or any other property, is to donate the land to the State of Texas. The Curries as well as the other landowners in the area have preserved the Canyon in its original state for nearly 100 years and will continue to do so.

Additionally, M&SR and Bush/Emeny attempt to downplay the number of people who would be affected by a transmission line crossing the North Palo Duro Canyon by referring to it as "Currie Canyon."¹⁷ The North Palo Duro Canyon area is owned and used by countless people other than the Currie family. The Currie Family Interests aligned group is comprised of numerous individuals who are not members of the Currie family; members of the Currie family own only a small portion of the enormous Canyon. For example, Greg Dodson is an airline pilot who has long enjoyed flying over the Canyon to view its beauty. The Rabah Resources property

¹⁵ Tr. at 1108-1112 (Sept. 23, 2010).

¹⁶ M&SR Exceptions at 11.

¹⁷ *For example*, M&SR Exceptions at 9, and Bush/Emeny Exceptions at 8.

(which includes land within the Canyon) is not owned by the Currie family. The PNPDC group is comprised of numerous individuals interested in protecting their properties near the Canyon such as the Elkins Ranch (an owner of land in and above the North Palo Duro Canyon, who hosts large numbers of visitors to the Canyon) and Greg White and his family. Although their uses for the land may differ, their collective preservation of the Canyon indicates they all believe that the Canyon is a unique geological wonder that should be preserved for future generations to enjoy. The PNPDC petition signed by over 1,600 people evidences this shared concern of both local citizens and individuals nationwide.¹⁸

M&SR belittles the testimony of Randall County Judge Houdashell, claiming guilt by association because he was asked to testify by “real estate developers.”¹⁹ It is crucial to note, however, that Judge Houdashell volunteered his opposition to routes affecting the Palo Duro Canyon – he was not testifying on behalf of CFI, but he understood completely the value of the Palo Duro Canyon to his constituency. M&SR’s guess about what Judge Houdashell might have said about the northern ranches, had they been in his jurisdiction, is nothing but that – a guess. There is nothing in the record to support this speculation.

Although M&SR argues that a route selection is not a popularity contest, M&SR states that its position was the most popular at the hearing.²⁰ M&SR also attempts to diminish the importance of the Protect North Palo Duro Canyon group by noting that the Canadian River Breaks also have a conservation group which filed comments in Project No. 37138.²¹ However, unlike PNPDC, the Canadian Basin Conservation group did not intervene in this proceeding or

¹⁸ A copy of the PNPDC petition as it existed on August 26, 2010, is attached to the Direct Testimony of Susan M. Rogers, CFI Ex. 2, Attachment J. An examination of the website of Protect North Palo Duro Canyon (www.protectcanyon.com) on November 22, 2010, revealed that there are currently 1,626 signatures.

¹⁹ M&SR Exceptions at 13.

²⁰ M&SR Exceptions at 8.

²¹ M&SR Exceptions at 12.

file testimony that could have been relied upon as evidence. Without any evidence in the record relating to the Canadian Breaks group, it is impossible to determine the group's credibility or discern what their position actually is.

M&SR's cynical criticisms of the efforts of landowners on and along the North Palo Duro Canyon to protect their land for the benefit of future generations lower the level of discourse in this proceeding to that of a personal attack on the motives of the individuals, a tactic not commonly seen in these proceedings. Accusing the Currie family members of duplicity does not advance the cause of reaching a reasoned, and reasonable, decision in this matter, nor do M&SR's misstatements of the record evidence. There are no "homes" in the North Palo Duro Canyon;²² the Red River Refuge is not the only portion of the Canyon that will not be developed;²³ the airport will not be on the rim of the Canyon;²⁴ no part of the CFI properties below Lake Tanglewood are crossed by transmission lines; the North Palo Duro Canyon is *not* owned solely by members of the Currie family; and there are clearly wind farms north of Amarillo.²⁵

M&SR also points to power lines in the area, claiming that other private parts of the Canyon have been crossed by two transmission lines.²⁶ In making this misleading statement, M&SR fails to note that these power lines are in the Lake Tanglewood area over a shallow and much narrower portion of a tributary canyon referred to as "Palo Duro Creek," several miles

²² The only structure in the Canyon is a rustic cabin with no running water or electricity.

²³ Direct Testimony of Genevieve Currie Green, CFI Ex. 7 at 6-10; Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 4, 8-14, 19-25; Direct Testimony of Tully R. Currie, CFI Ex. 1 at 7-9, 13-14, 16-17; Direct Testimony of Greg White, PNPDC Ex. 2 at 7; Direct Testimony of Mary Corrigan, PNPDC Ex. 1 at 7-9; Direct Testimony of Daniel L. Rogers, CFI Ex. 8 at 4-7; Direct Testimony of Tom Mechler, Rabah Resources Ex. 1 at 6-7.

²⁴ Direct Testimony of Tully R. Currie, CFI Ex. 1 at 18-19.

²⁵ SU Ex. 1, Attachment 1 (Environmental Assessment and Alternative Route Analysis ("EA")) at Figure 2-6b.

²⁶ M&SR Exceptions at 14.

west of the North Palo Duro Canyon.²⁷ The reference to the existing transmission lines as being at The Canyons development adjacent to Lake Tanglewood, is intended to mislead the Commission into believing that there are numerous power lines already marring the Canyon. The Canyons development is not part of North Palo Duro Canyon; in fact it is 3.5 to 4 miles away. Additionally, the terrain in that area is vastly different from the much deeper North Palo Duro Canyon southeast of the Lake Tanglewood. Simply put, the lines crossing the Palo Duro Creek are not an appropriate comparison to the property in the North Palo Duro Canyon, even if they were close enough to the North Palo Duro Canyon to mar the existing views. Because of the longer span required to cross the North Palo Duro Canyon, taller towers will be required to support the line. The existing towers in the area are not as massive as these new towers would have to be.²⁸

M&SR claims that the only portion of the Canyon which is “iconic” is the State Park.²⁹ While that may be the personal view of the declarant, this claim is unsupported by any evidence and ignores the fact that the Palo Duro Canyon is an expansive geological feature, the head of which begins just south of Lake Tanglewood. The boundary of the State Park is imperceptible unless one is looking at the boundaries of the park on a map and does not delineate where the beauty of the land starts and stops. The State Park boundaries are merely the boundaries of the land that the State of Texas has acquired, unrelated to any judgment of the beauty of other portions of the Canyon. The suggestion that the State Park is the only portion of the Canyon worth preserving is simply uninformed and inflammatory.

²⁷ Tr. at 939 (Sept. 22, 2010).

²⁸ See, CFI Initial Brief at 37.

²⁹ M&SR Exceptions at 14.

M&SR also asserts that there is a home inside the Canyon on the Currie property.³⁰ It is unclear precisely what structure to which M&SR is referring. While there is a small, historic log cabin, built nearly a century ago, deep in the Canyon, it is not habitable (it has no electricity) and hardly qualifies as a “home” in the manner in which M&SR is attempting to characterize it.

2. Recreational Park Areas

Bush/Emeny asserts that there was evidence related to aerial recreation only through the Palo Duro Canyon State Park.³¹ However, this statement ignores the evidence presented in this proceeding. There was a substantial amount of testimony submitted by Susan Rogers and Greg Dodson regarding aerial recreation over the North Palo Duro Canyon area. Specifically, Mr. Dodson testified that he has personally flown throughout the Canyon many hundreds of times in powered parachutes, small planes, and hot air balloons.³² Further, his uncontested testimony explained that he has personally taken thousands of people on tours over the North Palo Duro Canyon and has witnessed countless other pilots navigating the North Palo Duro Canyon specifically.³³ Additionally, the Pirates of the Canyon Balloon Festival starts in the southern portion of the Palo Duro Canyon and travels north up the Canyon.³⁴

Bush/Emeny also argues that the ALJ erred in determining that the size of the taller towers would make them more noticeable, but also create a hazard to recreational aircraft users.³⁵ The ALJ correctly applied common logic in making her assessment of the impact on the recreational areas. No evidence has been presented to indicate that taller, larger towers are safer for recreational aircraft than shorter, smaller towers. In fact, because the towers will have to be

³⁰ M&SR Exceptions at 14.

³¹ Bush/Emeny Exceptions at 7.

³² Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at 5, 7.

³³ Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at 9, 11, 14.

³⁴ Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at 11-12.

³⁵ Bush/Emeny Exceptions at 8.

taller to span the additional length, the lines will be suspended higher above the Canyon floor. The logical conclusion to be drawn from having higher lines, supported by Mr. Dodson's testimony, is that smaller aircraft and hot air balloons would be unable to gain sufficient altitude to avoid these structures and lines.³⁶

M&SR attempts to equate the airspace flown by thousands of tourists to view the North Palo Duro Canyon with a retreat house on Frying Pan Ranch in terms of private property being used by the public.³⁷ Airspace over privately held lands is accessible to the public anytime. The Frying Pan Ranch retreat house is not open to the public without the owners' permission. While CFI appreciates that this retreat house used by spiritual and other groups is an important feature on the Frying Pan Ranch, this retreat house is not viewed by the public in a similar manner to the North Palo Duro Canyon. Clearly, this retreat house is not an appropriate comparison for the North Palo Duro Canyon.

3. Historical and Aesthetic Values

(a) Historical Values

While CFI does not dispute that there is a rich history associated with many of the properties throughout the study area,³⁸ the North Palo Duro Canyon area also has a rich history that must be preserved.³⁹ The Palo Duro Canyon boasts 240 million years of geologic layers in its depths which have revealed evidence of Indian tribes, fossils of prehistoric creatures, and even a MesoIndian Campsite discovered by the Smithsonian Institution.⁴⁰ Because the North Palo Duro Canyon boasts a substantial amount of history, the ALJ was correct in determining that the history associated with the northern routes was not sufficient to outweigh the other

³⁶ Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at 17.

³⁷ M&SR Exceptions at 21.

³⁸ Bush/Emeny Exceptions at 8.

³⁹ CFI Initial Brief at 40.

⁴⁰ CFI Initial Brief at 40-42.

criteria which also indicated that a route crossing the North Palo Duro Canyon should not be chosen. Contrary to Bush/Emeny's assertion, the language in the PFD does not indicate that the ALJ "afforded little to no weight [to this factor] when recommending a route."⁴¹ Rather, the ALJ appropriately notes that the northern route has rich history associated with the property, as does the Palo Duro Canyon area.⁴² There is no evidence, however, that the historical sites on the Bush/Emeny properties cannot be avoided by the Company when routing and constructing the line.

(b) Aesthetic Values

In its discussion of aesthetic values, SPS claims that the "Central-South routes pass through unremarkable rangeland that no one but an owner would claim has great natural beauty."⁴³ One would hope that SPS is not referring to the Palo Duro Canyon. However, in making this inflammatory statement, SPS ignores the over 1,600 signatories to the petition to protect the beauty of the North Palo Duro Canyon. The pictures of the North Palo Duro Canyon submitted into evidence speak for themselves. The North Palo Duro Canyon is without question a strikingly beautiful area with unique geological features rarely found.⁴⁴ Furthermore, the points in the North Palo Duro Canyon where the proposed lines would cross along Link V and Link AA are two of the most spectacular points along the Canyon, extending out midway into the Canyon with views all up and down the Canyon. The loss of the aesthetic value of these areas in the North Palo Duro Canyon is an extraordinary price to pay for a mere transmission line.

⁴¹ Bush/Emeny Exceptions at 8.

⁴² PFD at 22-23.

⁴³ SPS Exceptions at 10.

⁴⁴ Direct Testimony of Susan M. Rogers, CFI Ex. 2 at Attachment D, E; Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at Attachment A.

Additionally, SPS seems to indicate that the spanning of the Canyon rather than passing through the Canyon makes the routes crossing the Canyon acceptable.⁴⁵ The fact that Sharyland may be able to span the Canyon without actually entering into the Canyon by using towers up to 30 feet taller than usual⁴⁶ is no consolation to the individuals who seek to preserve the Canyon in its natural state. The towers and the line stretching across the Canyon will mar the natural beauty of the Canyon whether the line spans from caprock to caprock or is set down on a shelf within the Canyon itself. The routes crossing the Canyon all have substantial negative impact on aesthetic values all along the Palo Duro Canyon, from Lake Tanglewood to and including the Palo Duro Canyon State Park. In addition, the North Palo Duro Canyon has great historic value that will be negatively impacted by the construction and presence of a transmission line across the Canyon.⁴⁷

CFI agrees with the comments of various parties that the route with the least impact to aesthetics is Commission Staff's ("Staff") Route SR.

4. Environmental Integrity

Contrary to the assertions of Bush/Emeny, M&SR, and SPS, Route 1 will have less impact on environmental integrity than Routes 4, 5, 8, 9, or 11 because Route 1 parallels existing rights-of-way for over one-half of its total length.⁴⁸ However, CFI also notes that Route SR will have the least impact on environmental integrity, as the area within this route is generally flat with numerous transmission lines, highways, and developed areas.

⁴⁵ SPS Exceptions at 10.

⁴⁶ Tr. at 1292-1293 (Sept. 24, 2010).

⁴⁷ Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 21-23; Direct Testimony of Genevieve Currie Green, CFI Ex. 7 at 10.

⁴⁸ See, CFI Initial Brief at 7-8.

Bush/Emeny argues that the wind leases on the Frying Pan Ranch are not material to the environmental impact of a transmission line.⁴⁹ The simple truth is, the Bush/Emeny property owners have entered into a wind lease with Cielo, and Cielo's Wildorado Two wind generation project has been in development for several years.⁵⁰ It is located in southeastern Oldham County and will contain about 34 wind turbines with a total generation capability of 78.2 MW.⁵¹ According to Cielo, many of these turbines will be built very near proposed Link B1.⁵² Although the evidence indicates that currently there are only two turbines planned for this development, the current 50+ year lease contains no limitation on the number of turbines that can be constructed on the property.

Bush/Emeny criticize the PFD for not citing the record for the statement that the FAA has been known to change its position vis-à-vis issuing permits. The citation to the record can be found in the cross-examination of Cielo witness Miller: the FAA has been known to change its mind about whether to issue permits for turbines, and how many permits to issue for any particular location.⁵³ Accordingly, the ALJ properly concluded that the wind leases near the northern routes make those routes better than impacting other undeveloped areas.

Bush/Emeny incorrectly assert that the ALJ's conclusion that transmission line related fires are an issue in the Canyon is based on merely an assumption.⁵⁴ Several of the testimonies submitted on behalf of CFI identified the very real risk of wildfires in the Canyon that could

⁴⁹ Bush/Emeny Exceptions at 10.

⁵⁰ A&R Ex. 26 (SU-Cielo 2-2) (Wind Energy Lease and Agreement between Cielo and Emeny); Tr. at 1009-1014 (Sept. 23, 2010).

⁵¹ Direct Testimony of Melissa Miller, Cielo Ex. 1 at 3, line 5-8.

⁵² Direct Testimony of Melissa Miller, Cielo Ex. 1, attached map.

⁵³ Tr. at 992-993 (Sept. 23, 2010).

⁵⁴ Bush/Emeny Exceptions at 14.

potentially be caused by collisions between birds or aircraft and lines, conductors or towers.⁵⁵ Sharyland has not investigated the risk of fires associated with aircraft collisions with transmission lines or the malfunction of transmission lines, and has no real plan to address this risk.⁵⁶ Clearly, no one is arguing that transmission lines will spontaneously ignite; rather, fires will be caused by collisions or weather events.⁵⁷ The Canyon is full of tall, dense trees and brush, but it is inaccessible to local firefighters because few roads extend to or below the rim of the Canyon. Although Bush/Emeny witness Hughes testified that fires caused by transmission lines are rare, the ALJ appropriately viewed this risk as a scenario for disaster if a fire was to start in the Canyon.⁵⁸

Bush/Emeny's assertion that there is "more danger that a Texas Horned Lizard will be trampled to death by utility construction vehicles than there is of transmission lines causing fires"⁵⁹ is unsupported; Bush/Emeny cites no evidence as to the likelihood of either the Texas Horned Lizard being trampled or a fire being caused by a transmission line alone. Additionally, M&SR asserts that there are several roads and jeep trails within the Canyon that would allow access in case of a fire.⁶⁰ However, the evidence in this proceeding all points to the fact that the roads currently available to access the Canyon are insufficient for either fire trucks or construction crews to use.⁶¹ The roads that do extend to the rim become impassable, especially

⁵⁵ Direct Testimony of Tully R. Currie, CFI Ex. 1 at 17-18; Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 20, 26.

⁵⁶ CFI Ex. 35 (CFI-SU 3-13).

⁵⁷ Direct Testimony of Paul Gregory Dodson, CFI Ex. 5 at 23-24; Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 26.

⁵⁸ Sharyland stated it does not plan to clear the right-of-way in the Canyon if the Canyon is spanned, thus there will be no "fire break" in the Canyon. Mr. Hughes was uninformed on this issue. Tr. at 1093 (Sept. 23, 2010).

⁵⁹ Bush/Emeny Exceptions at 14.

⁶⁰ M&SR Exceptions at 27.

⁶¹ Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 16-18, 23, 26.

for fire trucks loaded with water, during and after rainstorms.⁶² Sharyland explained that suitable roads would have to be built to access the construction areas.⁶³

M&SR incorrectly states that the ALJ acknowledged that no clearing in the Canyon is anticipated if a Central-South route were selected.⁶⁴ However, the ALJ also acknowledged that the crossing of the Canyon might require the placement of towers within the Canyon itself: Sharyland witness Mundy indicated that the crossing could employ a natural bench *within the Canyon*.⁶⁵ The ALJ concluded that “[u]nless the bench had no vegetation on or near it, this approach would presumably involve clearing of vegetation in the canyon.”⁶⁶ While Sharyland indicated that it had no anticipation of the need for mid-point towers (*i.e.*, towers within the Canyon), it also claimed that the “secondary level” may need to be used (which is, in fact, a mid-point tower within the Canyon).⁶⁷ However, Sharyland indicated that it did not know where towers would actually be located on the Canyon rims.⁶⁸ If a tower is placed inside the Canyon, or if the lines drop down close to the trees and vegetation, such trees and vegetation will impede safe construction and will need to be removed.⁶⁹ Sharyland has not yet determined how it would span the Canyon, much less the amount of vegetation that will need to be cleared. Therefore, the ALJ was correct to assume that clearing of vegetation would likely be required if the Central-South route was chosen.

⁶² Direct Testimony of Susan M. Rogers, CFI Ex. 2 at 26.

⁶³ CFI Ex. 28 (CFI-SU 3-5); CFI Ex. 29 (CFI-SU 3-6).

⁶⁴ M&SR Exceptions at 27.

⁶⁵ PFD at 26.

⁶⁶ PFD at 26.

⁶⁷ CFI Ex. 16 (CFI-SU 1-7).

⁶⁸ CFI Ex. 24 (CFI-SU 3-1).

⁶⁹ Sharyland stated that it has not determined the angle of the conductors as the line drops into the Canyon. CFI Ex. 32 (CFI-SU 3-10).

Neither the ALJ nor the Commission are bound by an environmental consultant's (such as PBS&J) "consensus ranking" or by a transmission service provider's ("TSP") selection of a "preferred route." Of the 13 CREZ CCN projects that have been approved to date by the Commission, in only one of these cases has the Commission accepted the TSP's preferred route in its entirety.⁷⁰ Thus, Bush/Emeny's complaint that the ALJ has not given adequate weight to the consensus ranking process of the environmental consultant is a red herring.⁷¹

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

The location of both the wind farms currently existing and those planned for the future are important considerations for the routing of these transmission lines in order for the routing to accomplish the intended result to bring wind energy from the Panhandle into the ERCOT grid. The ALJ appropriately reviewed all the benefits to be obtained by locating the transmission line near wind developments (there are many), but contrary to the assertions of those who disagree with the ALJ's recommendation, the ALJ did not base the recommendation in the PFD on the existence of these benefits. Rather, the PFD appropriately noted that the northern route would be convenient and have less of an impact on property because of the shorter distances to interconnect the wind developments to the transmission line. Thus, the PFD considers the relevant factors and the recommendation is based on only those relevant factors.

6. Engineering Constraints

The ALJ properly concluded that the engineering constraints related to Route 1 are more favorable because they cross predominately crop land and do not involve major canyon crossings.⁷² While there may be constraints relating to the proximity of the lines to wind farms

⁷⁰ *Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Central Bluff - Bluff Creek 345-kV CREZ Transmission Line in Nolan, Taylor, and Runnels Counties*, Docket No. 37529, Order (Apr. 15, 2010).

⁷¹ Bush/Emeny Exceptions at 13-14.

⁷² PFD at 43.

and SPS transmission lines along the northern routes, the evidence presented indicates that these are concerns that are “routinely encountered and resolved by utilities.”⁷³

M&SR asserts that crossing the North Palo Duro Canyon is not an “engineering constraint” that should weigh against selecting a Central-South route.⁷⁴ However, M&SR also noted that a cost premium will need to be placed on the route crossing the Canyon to account for the transmission line crossing the Canyon. Clearly, if additional measures will need to be taken to span the Canyon, this is an “engineering constraint.” While Sharyland witness Mundy asserted that this span can be crossed, Sharyland offered no evidence of how the crossing will be constructed or the actual amount of cost increase that will be associated with the increased span length. There were many questions from CFI regarding the crossing of the Canyon posed in the form of requests for information and during cross-examination at the hearing that have simply gone unanswered. This is because Sharyland has not fully contemplated how it will accomplish spanning the expansive North Palo Duro Canyon.⁷⁵

Similarly, SPS’s concerns are resolvable and are not sufficient to overcome the advantages of the Preferred Route.

7. Costs

Both M&SR and Bush/Emeny note that Route 5 costs less than Route 1;⁷⁶ however, both fail to mention the suspect and unreliable nature of these cost estimates.⁷⁷ A full discussion of

⁷³ PFD at 45; *citing* Sharyland Ex. 5 at 24-25 (Caskey Rebuttal). *See also* Tr. at 964 (Sept. 23, 2010).

⁷⁴ M&SR Exceptions at 28.

⁷⁵ *See*, CFI Initial Brief at 57-58 and CFI Reply Brief at 22-23 for a discussion of the engineering constraints likely to be found by Sharyland if it eventually has to survey the Canyon and design the facilities to cross the Canyon.

⁷⁶ Bush/Emeny Exceptions at 22; M&SR Exceptions at 30.

⁷⁷ Tr. at 1114 (Sept. 23, 2010); Direct Testimony of Harold L. Hughes, Jr., P.E., Joint North Intervenors Ex. 1 at 50.

the true nature of the costs that will be encountered if a route across the North Palo Duro Canyon is selected can be found at CFI Initial Brief at 52-59 and CFI Reply Brief at 23-25.

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

M&SR asserts that Route 1 ranks artificially well in paralleling compatible corridors due to an incorrect designation of “property boundaries.”⁷⁸ CFI agree that Sharyland and its consultants did a poor job of identifying actual property boundaries in this matter. However, when EA routing factors 4, 5, and 6 are added together, Route 1 parallels existing transmission line right-of-way, other existing right-of-way, and apparent property boundaries for a total of 55.74 miles, or 59.6% of its total length.⁷⁹ The comparative numbers for Route SR are: 45.1 miles or 58.2% of its total length.⁸⁰ In contrast, the combined numbers for Routes 4 and 5 yield the following: a total of 1.76 miles (2.8%) for Route 4, and a total of 2.83 miles (4.3%) for Route 5.⁸¹

Even if one removes from the calculation the “half a dozen miles” that M&SR claims do not actually follow property boundaries, both Route 1 and Route SR are still much better in terms of paralleling than Route 5 as it crosses the North Palo Duro Canyon. Route 5 cuts directly through virgin ranch territory because Sharyland was seeking the shortest route across the Palo Duro Canyon without regard to the routing criteria.⁸² Thus, both Route 1 and Route SR are more desirable in terms of following existing compatible rights-of-way.

⁷⁸ M&SR Exceptions at 31.

⁷⁹ See, CFI Initial Brief at 7-8.

⁸⁰ Direct Testimony of Kevin Mathis, Staff Ex. 1 at Ex. KM-4.

⁸¹ SU Ex. 1a (Errata to Attachment 1 to Application).

⁸² Tr. at 398 (Sept. 21, 2010).

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

All proposed routes conform with this policy; no habitable structures on any route will be within the right-of-way.⁸³ CFI agree, however, with the Staff's characterization of the policy of prudent avoidance and how this policy is met by the use of Route SR; none of the habitable structures along Link P are directly within the right-of-way of the proposed transmission line. Furthermore, Link P parallels an already existing 115 kV transmission line, so the habitable structures are currently affected by an existing line in that area.⁸⁴ An inspection of the maps provided by Sharyland reveals that there are already numerous transmission lines in the area along Link P. Accordingly, the addition of a transmission line along Link P would not violate the Commission's policy of prudent avoidance.

10. ALJ's Routing Analysis

The ALJ's summary of the analysis appropriately determines that the Central-South routes are some of the "least acceptable" routes when all of the criteria are weighed together.⁸⁵ While all of the choices for the proposed route admittedly have various undesirable aspects, a route crossing the North Palo Duro Canyon is the *worst* of all of the options. Route 1 is the most supportable choice.

III. CONCLUSION

Although imperfect due to its length and cost, Route 1 is the "most reasonable and supportable" choice when all of the criteria are balanced.⁸⁶ By following a substantial amount of right-of-way, complying with the Commission's policy of prudent avoidance, avoiding substantial engineering constraints in the study area, preserving the environmental integrity of the North Palo Duro Canyon, and best addressing the overwhelming amount of concern

⁸³ SU Ex. 1, Attachment 1 (EA) at Table 6-5.

⁸⁴ SU Ex. 1, Attachment 1 (EA) at Figure 2-6a.

⁸⁵ PFD at 53.


⁸⁶ PFD at 58.

expressed by the community throughout the study area and especially in the North Palo Duro Canyon area, Route 1 would have the least negative impact on the study area.

CFI respectfully submits that the exceptions filed by intervenors herein should be denied⁸⁷ and the PFD's recommendation should be accepted by the Commission.

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RIVER FALLS PROPERTY OWNERS
ASSOCIATION, AND RABAH RESOURCES, LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2010, a true and correct copy of the foregoing document is being served via email, facsimile, U.S. mail, and/or hand delivery to all parties of record.



GEORGIA N. CRUMP

⁸⁷ However, CFI's Limited Exceptions pertaining to the citation to out-of-record statements, should be granted.