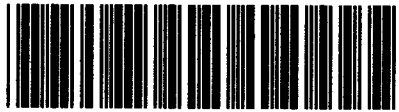




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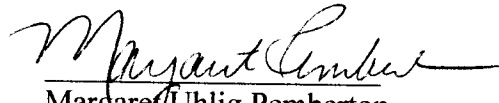
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<p>APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED MCCAMEY D TO KENDALL TO OF GILLESPIE 345-KV CREZ TRANSMISSION LINE IN SCHLEICHER, SUTTON, MENARD, KIMBLE, MASON, GILLESPIE, KERR, AND KENDALL COUNTIES</p>	<p>§ § § § § § § § § § §</p>	<p>BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS</p>
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COMMISSION STAFF'S REPLY MOTIONS FOR REHEARING

Respectfully Submitted,



Margaret Uhlig Pemberton
State Bar No. 20371150
Division Director
Legal Division
(512) 936-7290
(512) 936-7268 (facsimile)

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

February 23, 2010

**PUC DOCKET NO. 38354
SOAH DOCKET NO. 473-10-5546**

APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED MCCAMEY D TO KENDALL TO OF GILLESPIE 345-KV CREZ TRANSMISSION LINE IN SCHLEICHER, SUTTON, MENARD, KIMBLE, MASON, GILLESPIE, KERR, AND KENDALL COUNTIES	§ § § § § § § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S REPLY TO MOTIONS FOR REHEARING

COMES NOW Staff (Staff) of the Public Utility Commission (Commission), representing the public interest, and files this Reply to Motions for Rehearing.

On July 28, 2010, LCRA Transmission Services Corporation (LCRA TSC) filed an application to amend its certificate of convenience and necessity (CCN) for a proposed 345 kilovolt (kV) Competitive Renewable Energy Zones (CREZ) Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr and Kendall Counties. Over 1000 people intervened in the proceeding. The hearing on the merits was scheduled for two weeks beginning October 25, 2010. The hearing on the merits was completed in seven working days on November 2, 2010. On December 16, 2010, the administrative law judges (ALJs) issued a proposal for decision (PFD) recommending that the Commission adopt a route identified as Staff MK15. The Commission issued an Order on January 24, 2011 adopting a modified route MK63. Motions for Rehearing were filed by Peggy Skaggs on February 15, 2011 and jointly by the City of Kerrville, Kerr County, Kerrville Public Utility Board and the City of Junction (“the Kerrville/Junction Parties”) on February 16, 2011. Pursuant to P.U.C. PROC. R. 22.264(a) and APA § 2001.146(b), this Reply to those Motions is timely filed.

I. DISCUSSION

Point of Error 1 – The Commission erred because it disregarded expressed community values and therefore, the Order is not supported by substantial evidence, and is arbitrary and capricious and characterized by an abuse of discretion.

Point of Error 2 – the Commission erred in disregarding and violating the Commission’s policy of prudent avoidance.

The Kerrville/Junction Parties allege that the Commission erred by choosing a modified route MK63 because it passes directly through the developed areas within the City of Kerrville, because the route affects a greater number of habitable structures than most of the other routes, and because the chosen route disregards the Commission’s policy of prudent avoidance.

The Commission is required to consider and necessarily balance, the statutory factors identified in PURA §37.056.¹ In CREZ transmission line cases, the Commission is not required to consider adequacy of existing service or the need for additional service.² The Commission considered the record evidence in this docket and through careful deliberation decided that a modified route MK63 best balances the factors under PURA § 37.056 and P.U.C. SUBST. R. 25.101.³

The Kerrville/Junction Parties assert the Preferred Route, route MK13 is the appropriate route. However, route MK13 “would cut a new right of way (ROW) through the Hill Country and would parallel few property lines.”⁴ The ALJs, Staff, public officials and a large number of intervenors believed that avoiding a new ROW through the Hill Country was such a strong community value that route MK13 should be rejected.⁵ The ALJs noted that paralleling existing compatible ROW was among the highest factors, if not *the* highest factor in importance as ranked by the members of the community in the LCRA TSC questionnaires.⁶ Chairman Smitherman at the Open Meeting noted that the highest ranking factor at the Kerrville public open house was the desire of community to parallel existing ROW.⁷

Additional support for rejecting route MK13 or any other central or northern routes based upon substantial evidence in the record is Finding of Fact (FF) 83, which states:

¹ Public Utility Regulatory Act, TEX. UTIL. CODE § 37.056 (Vernon 2007& Supp. 2009) (PURA) ; P.U.C. SUBST. R. 25.101 ; *Hammack v. Public Utility Commission*, 131 S.W.3d 713, 727 (Tex. App. Austin 2004, pet. denied).

² PURA § 39.904(h).

³ Order at 1 (Jan. 24, 2011).

⁴ Proposal for Decision at 20 (Dec. 16, 2010) (“PFD”)

⁵ PFD at 18-20.

⁶ PFD at 19; Direct Testimony of Judge Mark Stroehrer at 6 (Sep. 28, 2010).

The selection of MK13 or a central or northern route is expected to spread oak wilt more than a route that used the I-10 corridor such as MK32, MK33, MK63, or Staff MK15 Modified.⁸

Regarding the Commission policy on prudent avoidance, the ALJs concluded that *all* of the filed routes complied with the Commission's policy on prudent avoidance.⁹ Furthermore, although several individual intervenors expressed concerns about possible adverse effects from electric-magnetic fields (EMF), the ALJs found that there is no reliable scientific basis to conclude that exposure to EMF from 345-kV transmission lines will cause or contribute to adverse health effects in people or animals.¹⁰

The ALJs noted that whether a route is selected along I-10 near Kerrville or deviates around Kerrville through the Tierra Linda Ranch subdivision, landowners will be affected; but the area near Kerrville is already affected and bisected by I-10.¹¹ The ALJs stated:

Moving the line into an area that does not have a large scar across the landscape already is more damaging than placing it along an already-disturbed area. Not only is it better environmentally, as TPWD and CVA argue, but it helps to preserve the scenic nature of the Hill Country, which position CVA has held throughout the proceeding.¹²

The ALJs also noted that if LCRA TSC constructed the line using a 100 foot ROW instead of a 140 foot ROW along I-10 near Kerrville, six fewer habitable structures would be within the ROW.¹³ Both the lattice towers and the monopoles proposed in this case will fit within a 100 foot ROW.¹⁴

The Commission considered the effect that extending the line along I-10 near Kerrville would have on increasing the number of habitable structures affected,¹⁵ and decided after weighing all of the factors that the I-10 corridor was most compatible with this transmission line.¹⁶ To help ease the burden of the line, the Commission ordered monopoles along I-10 within

⁷ Open Meeting Transcript at 71-72 and 79-80 (Jan. 13, 2011).

⁸ Order at 14, FF 83.

⁹ PFD at 74.

¹⁰ PFD at 76-77.

¹¹ PFD at 75.

¹² PFD at 75-76.

¹³ *Id.*

¹⁴ Order at 9, FF 47.

¹⁵ Open Meeting Transcript at 78-29, 290-291.

¹⁶ Order at 2 (Jan. 24, 2011).

the extraterritorial jurisdiction (ETJ) of Kerrville.¹⁷ and ordered LCRA TSC to work with landowners and accommodate minor deviations in the approved route to minimize the impact of the project.¹⁸ Substantial evidence supports the Commission's Order; Points of Error 1 and 2 should be overruled.

Point of Error 3 – The Commission erred in materially rerouting Link Y11 after the closing of the evidentiary hearing without providing affected parties the opportunity to examine witnesses or present evidence on the impact of the rerouting.

The Kimble County Airport presents a significant engineering constraint when routing to the south, an issue that was developed at the hearing and addressed by considerable direct testimony, rebuttal and cross examination. The Commission selected a modified route MK63, a route developed at the hearing on the merits, and ordered LCRA TSC to address engineering constraints by moving link Y11 of the modified route MK63 as far south as safely and reliably possible using above ground construction while affecting only *noticed* landowners.¹⁹

The Kerrville/Junction Parties argue that the affected parties did not have the opportunity to examine witnesses or present evidence on the impact of what the Kerrville/Junction Parties characterized as a rerouting. However, no unnoticed landowners will be affected and the parties had the opportunity to address routing and routing constraints at the hearing on the merits. All noticed parties had the opportunity to fully participate in the hearing on the merits. By way of example, in this case ChiRoss Partnership, JDR-FCR Family Partnership and Junction Hotel Partners (“the ChiRoss Parties”) requested that they be dismissed because they were not within 500 feet of any proposed link in the project.²⁰ The ChiRoss Parties argued that LCRA TSC's notice stated in bold print that **“the Commission may modify the proposed routes and segments into different configurations than those proposed, so long as they affect only noticed landowners.”**²¹ Furthermore, the ChiRoss Parties noted that the Commission's landowner brochure, which was included in LCRA TSC's notice, states that “[d]uring the course of a CCN case, the possibility exists that additional routes may be developed that could affect property in a different manner than the original routes proposed by the applicant.”²² The ALJs

¹⁷ Order at 24, Ordering Paragraph 4.

¹⁸ Order at 24, Ordering Paragraph 5.

¹⁹ Order at 24, Ordering Paragraph (emphasis added).

²⁰ Intervenor ChiRoss Partnership, LLC, JDR-FCR Family Partnership and Junction Hotel Partners, LP Joint Motion to Dismiss Because They Are Not Directly Affected Landowners (Oct. 11, 2010) (ChiRoss MTD).

²¹ ChiRoss MTD at 4, *citing*, LCRA TSC'S Application, Attachment 6 at 2 of 65.

²² *Id.* *citing* LCRA TSC'S Application, Attachment 6 at 61 of 65.

initially granted the ChiRoss Parties' request and dismissed them from the case.²³ LCRA TSC then filed a Motion to Reconsider Portion of Order 14 explaining that LCRA TSC provided notice to landowners beyond the 500 foot notice requirement to provide maximum flexibility for the Commission when selecting a route; therefore, a route could be selected anywhere along notice property owners.²⁴ The ALJs agreed and granted LCRA TSC's Motion to Reconsider order No. 14, thereby reinstating the ChiRoss Parties. It is well settled that a transmission line may be located on a noticed landowner in a different configuration or location than where the line was drawn on the notice maps.

The route along I-10 near the City of Junction was hotly contested. LCRA TSC proposed a route south of the airport but recommended that the line be buried at an additional cost of \$54 million.²⁵ Clear View Alliance (CVA) and David H. Segrest, Trey Whichard, Kerry Brent Scott Trust, Kimberly Frances Hirmas and Alamo Freight Lines, Inc. (collectively, the Segrest Parties) urged that the proposed transmission line could be safely built above ground south of I-10 and not interfere with the Kimble County Airport.²⁶ In fact, CVA's expert, Edward McGavern, testified that "[a]nother alternative is to locate the line on the south Side of the Llano River to gain more distance and get a lower profile for the line as it falls down into the Llano River area."²⁷ The Commission's discretion in ordering LCRA TSC to build the line as far south as safely and reliably possible using above ground construction while affecting only noticed landowners comports with the discretion that the Commission has in each and every CCN case. It also comports with the information provided to all noticed landowners in LCRA TSC's notice as well as in the Commission's landowner brochure. Point of Error No. 3 should be overruled.

Point of Error 4 – The Commission erred by adopting findings of fact that are not supported by substantial evidence, and give the Order an appearance of a pre-determined result.

²³ Order 14 at 1 (Oct. 12, 2010).

²⁴ LCRA TSC's Motion to Reconsider Portion of Order 14 Relating to Dismissal of Certain Intervenors at 4-5 (Oct. 14, 2010).

²⁵ Direct Testimony of Curtis D. Symanck, P.E. at 35 (Jul. 28, 2010) ("Symanck Testimony").

²⁶ Direct Testimony of Edward G. McGavern, P.E., at 20-22 (Sep. 28, 2010) ("McGavern Testimony"); Direct Testimony of Frank O. McIllwain, P.E. at 6-8 and Attachments (Sep. 28, 2010) ("McIllwain Testimony"); Exceptions to Proposal for Decision filed by Intervenors David H. Segrest, Trey Whichard, Kerry Brent Scott Trust (4C ranch), Kimberly Frances Hirmas and Alamo Freight Lines, Inc. at 2 and 12-14 ("Segrest Parties Exceptions to PFD").

²⁷ McGavern Testimony at 21.

As explained above, substantial evidence in the record supports the Commission's Order in this docket. The Kerrville/Junction Parties further complain that the Commission changed findings of fact without explanation. The Commission clearly explained why a modified route MK63 was chosen: the Commission found that "in the area around Junction and Kerrville, it is more desirable to parallel or closely follow [I-10] rather than cutting through less developed land."²⁸ As can be seen from the transcripts throughout the two Open Meetings in which this docket was discussed, the Commission had not predetermined which route they were going to select.²⁹ The Commission, after reviewing the evidence and hours of deliberation, determined that a modified route MK63 was the best route. Point of Error 4 should be overruled.

Skaggs Motion for Rehearing

Peggy Skaggs filed a Motion for Rehearing in the form of a letter on February 15, 2011.³⁰ Ms. Skaggs complained that the "City of Junction has had no opportunity to analyze the economic impact of the relocated line on the city's future tax base because this relocation was based on unexamined 'new information' . . ."³¹ The record reflects that a proposed route ran south of I-10; the City of Junction as well as landowners south of I-10 (including Mrs. Skaggs) were noticed.³² The City of Junction had sufficient opportunity to analyze the economic impact of the potential line on its future tax base during the course of the proceeding.

Ms. Skaggs also complains that the line as presently ordered continues to present possible runway obstacle problems for Kimble County Airport and for the City of Junction's air ambulance helipad.³³ The City of Junction offered no evidence in the record, including a location of its air ambulance helipad, nor did the City of Junction argue such a position in its Motion for Rehearing. The constraints regarding the Kimble County Airport were developed and addressed in the Order.³⁴

²⁸ Order at 2.

²⁹ Open Meeting Transcript at 60-301 (Jan. 13, 2011) and Open Meeting Transcript at __39-121__ (Jan. 20, 2011).

³⁰ Letter from Merton and Peggy Skaggs Revocable Trust, Merton and Peggy Skaggs, Trustees, (Feb. 15, 2011) (Skaggs Motion for Rehearing).

³¹ *Id.* at 2.

³² LCRA TSC Application, Attachment 4, Attachment 6 and Figure 6-1(f).

³³ *Id.*

³⁴ Order at 22, FF 160; and 24, Ordering Paragraph 2.

Finally, Ms. Skaggs argues that the selected route violates Executive Order 11988.³⁵ Executive Order 11988 applies only to federal agencies and is not applicable here.³⁶ Ms. Skaggs' Motion for Rehearing should be overruled.

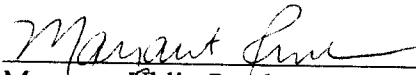
CONCLUSION

For the reasons set forth above, the Commission's Order is not in violation of any constitutional or statutory provision, is not in excess of the Commission's statutory authority, is not made through any unlawful procedure, is not affected by any error of law, is reasonably supported by the substantial evidence considering the reliable and probative evidence in the record as a whole and is not arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. The Motions for Rehearing filed in this docket should be overruled.

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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 23th of February, 2011 in accordance with Order No. 1 in this docket.


Margaret Ohlig Pemberton

³⁵ *Id.*

³⁶ 18 C.F.R. Part 725.0 (1980) - This rule establishes the procedures to be followed by the U.S. Water Resources Council for applying Executive Order 11988, Floodplain Management, and Executive Order 11990, Wetlands Protection, to the water resources planning assistance activities that it performs.