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JOINT APPLICATION OF ELECTRIC §  
TRANSMISSION TEXAS, LLC AND §  
SHARYLAND UTILITIES, L.P. TO §  
AMEND THEIR CERTIFICATES OF §  
CONVENIENCE AND NECESSITY FOR §  
THE NORTH EDINBURG TO LOMA §  
ALTA DOUBLE-CIRCUIT 345-KV §  
TRANSMISSION LINE IN HIDALGO §  
AND CAMERON COUNTIES §

BEFORE THE STATE OFFICE

OF

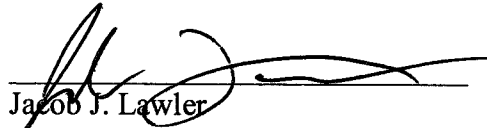
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S INITIAL BRIEF

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Dated: December 18, 2013



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<b>JOINT APPLICATION OF ELECTRIC</b>	<b>§</b>	
<b>TRANSMISSION TEXAS, LLC AND</b>	<b>§</b>	
<b>SHARYLAND UTILITIES, L.P. TO</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>AMEND THEIR CERTIFICATES OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY FOR</b>	<b>§</b>	<b>OF</b>
<b>THE NORTH EDINBURG TO LOMA</b>	<b>§</b>	
<b>ALTA DOUBLE-CIRCUIT 345-KV</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>TRANSMISSION LINE IN HIDALGO</b>	<b>§</b>	
<b>AND CAMERON COUNTIES</b>	<b>§</b>	

**COMMISSION STAFF'S INITIAL BRIEF**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (PUC or Commission), representing the public interest, and files this Initial Brief, and would show the following:

**I. INTRODUCTION AND SUMMARY**

**Introduction**

Electric Transmission Texas, LLC and Sharyland Utilities, L.P. (together, Applicants) filed an application (Application) and an amended application (Amended Application) with the Commission to amend their certificates of convenience and necessity (CCNs) for a proposed 345-kilovolt (kV) transmission line in Hidalgo and Cameron Counties, Texas.

The Application and Amended Application propose construction of a new 345-kV line from an existing American Electric Power Texas Central Company substation (North Edinburg Substation) in Hidalgo County north of the City of Edinburg to an existing Brownsville Public Utilities Board substation (Loma Alta Substation) located east of the City of Brownsville.

The total length of the proposed transmission line will vary from approximately 86.3 to 124.5 miles, depending on the route selected. The Commission has the authority to approve any single route or combination of routes. The Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) has deemed this transmission line as critical to the reliability of the ERCOT system and to the Brownsville area.



## Summary

Although a total of 42 routes were proposed by the Applicants in their Application and Amended Application, three routes were highlighted at the hearing on the merits. Each of these three routes was recommended by one or more parties. The Applicants identified Route 32 as the route they believe best addresses the requirements of the Public Utility Regulatory Act (PURA) and the Commission's Substantive Rules.<sup>1</sup> Route 32 is composed of links 1-4-7-10-17-26-32-33-43-45-51-48-54-56-60-64-342-71a-71b-75-78-81-82-83-85a-85c-85b-84c-87-89-92-94-96-97-105-107-114-117-116-118a-118c-125a-125b-128-175-179-185-187a-187b-196a-196b-200-203-212-214-219-226-233-235-256-258-265-271-270-269-268-267-274-277-304-305-312-313-357-339-341.<sup>2</sup> Certain intervenors recommended Route 3S Modified (Agreed Route).<sup>3</sup> Route 3S Modified (Agreed Route) is composed of links 134-136a-355-137b-138-141-147-152-155-162-165-169-193a-193b-361-351b-193c-194-201-207-208-209-212-214-219-226-233-235-256-258-265-286-285 partial-362-279 partial-278-268-267-273-308-321-327-328-335-340-341.<sup>4</sup> Staff recommended Route 1S.<sup>5</sup> Route 1S is composed of links 134-135-137a-137b-138-141-147-152-155-162-165-169-193a-349a-187a-187b-196a-351a-351b-193c-194-201-210-221-223-225-230-233-234-240-243-249-255-265-286-287-294-297-299-317-318-331.<sup>6</sup> Accordingly, this brief will focus on these three recommended routes.

While all the factors contained in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B) are important and must be weighed, Staff believes that the three recommended routes are best differentiated by focusing on three criteria: (1) each route's total length; (2) each route's total cost; and (3) and the number of habitable structures located within 500 feet of each route. The table below summarizes how each route compares using these three criteria.

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<sup>1</sup> Joint Applicants Ex. 3 at 7, Direct Testimony of Mark E. Caskey; Joint Applicants Ex. 12 at Bates 8, Supplemental Direct Testimony of Mark E. Caskey; Joint Applicants Ex. 16 at 3, Rebuttal Testimony of Mark E. Caskey.

<sup>2</sup> Joint Applicants Ex. 2 at Table 3-1 at 3-35, Environmental Assessment (EA).

<sup>3</sup> Rhodes Alliance Ex. 14, Joint Stipulation of Agreed and Supporting Parties.

<sup>4</sup> Joint Applicants Ex. 21.

<sup>5</sup> Staff Ex. 1 at 16, Direct Testimony of Michael J. Lee (Lee Direct).

<sup>6</sup> Joint Applicants Ex. 11 at Table 3-1S at Bates 30, Amended Application and EA in Response to Order No. 6 (Amended Application).



	<b><u>Route 32</u></b> <sup>7</sup>	<b><u>Route 3S Modified</u></b> <b><u>(Agreed Route)</u></b> <sup>8</sup>	<b><u>Route 1S</u></b> <sup>9</sup>
<b>Length</b>	117.5 miles	96.1 miles	86.3 miles
<b>Cost (in millions)</b>	\$352.2	\$309.3	\$283.6
<b>Habitable structures</b>	465	951	711

Route 1S is the shortest route, is the least expensive route, and impacts 240 fewer habitable structures than Route 3S Modified (Agreed Route). Although Route 32 impacts the fewest habitable structures, it is approximately \$69 million more expensive than Route 1S. Moreover, Route 3S Modified (Agreed Route) is more expensive, longer, and impacts a greater number of habitable structures than Route 1S. Additionally, as Joint Applicants Exhibit No. 20 (map) shows, Route 32 is not forward progressing. Route 32 avoids a large population center by heading almost due west – the opposite direction of its termination point.<sup>10</sup> Staff will further address these criteria and others in Section IV (Route Selection) below.

## II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On July 3, 2013, the Applicants filed their Application with the Commission to amend their CCNs for a proposed 345-kV transmission line in Hidalgo and Cameron Counties, Texas. The ERCOT ISO has deemed this transmission line as critical to the reliability of the ERCOT system and to the Brownsville area. Accordingly, under P.U.C. SUBST. R. 25.101(b)(3)(D), the Commission must render a decision approving or denying the Application within 180 days of the date of filing a complete application unless good cause is shown for extending that period. However, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) found good cause to extend this deadline,<sup>11</sup> and the Applicants agreed to extend the deadline by 52 days.<sup>12</sup> Therefore, the new deadline is February 20, 2014.<sup>13</sup>

<sup>7</sup> EA at Table 4-1; Joint Applicants Ex. 1, Application at Attachment 5 (Application).

<sup>8</sup> Joint Applicants Ex. 22; Joint Applicants Ex. 23.

<sup>9</sup> Amended Application at Table 4-1S; Amended Application at Attachment 5S.

<sup>10</sup> See Joint Applicants Ex. 20.

<sup>11</sup> SOAH Order No. 4 at 1-2 (Sep. 9, 2013).

<sup>12</sup> Letter from Applicants (Sep. 3, 2013).

<sup>13</sup> *Id.*



On July 8, 2013, the Commission referred this proceeding to SOAH and requested the assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD). This Order of Referral and Preliminary Order (Preliminary Order) also listed seven issues to be addressed in this docket.<sup>14</sup> Staff addresses each of these seven issues in its initial brief below.

On July 30, 2013, the Applicants filed affidavits attesting that they provided notice as required by P.U.C. PROC. R. 22.52(a).<sup>15</sup> The Applicants attested that they published notice of their Application in the newspapers that have general circulation in counties where the CCN is being requested and included in the filings associated tear sheets. Also in the affidavits, the Applicants attested to the fact that notice was provided to directly-affected landowners, each affected utility, and affected city and county governments as required by P.U.C. PROC. R. 22.52(a)(1). Staff witness Michael J. Lee concluded that the Applicants fulfilled all the notice requirements.<sup>16</sup>

On September 17, 2013, a number of intervenors filed statements challenging the adequacy of routes and requesting a hearing on route adequacy. On October 8, 2013, a hearing on route adequacy was held by SOAH. Pursuant to the order of the SOAH ALJ concerning route adequacy,<sup>17</sup> the Applicants filed their Amended Application to add additional routes made from existing, noticed links, which do not travel within the proximity circle drawn by Applicants around the South McAllen substation.<sup>18</sup> These links are designated 1S through 10S.<sup>19</sup>

On December 3 and 4, 2013, a hearing on the merits was held at SOAH. Pursuant to the order of the SOAH ALJ that immediately followed the close of this hearing, parties may file post-hearing initial briefs by December 18, 2013, and post-hearing reply briefs by January 8, 2014.<sup>20</sup> Therefore, this pleading is timely filed.

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<sup>14</sup> Order of Referral and Preliminary Order at 2-4 (Jul. 8, 2013) (Preliminary Order).

<sup>15</sup> Joint Applicants Ex. 15, Proof of Notice.

<sup>16</sup> Staff Ex. 1 at 16-17, Direct Testimony of Michael J. Lee (Lee Direct).

<sup>17</sup> SOAH Order No. 6 (Oct. 21, 2013).

<sup>18</sup> See Amended Application.

<sup>19</sup> *Id.*

<sup>20</sup> See also SOAH Order No. 10 (Dec. 6, 2013).



### III. ISSUES RELATING TO THE APPLICATION

#### A. Application and Route Adequacy

Issue No. 1 of the Preliminary Order asks:

Is Joint Applicants' application to amend its CCN adequate? Does the application contain an adequate number of alternative routes to conduct a proper evaluation?<sup>21</sup>

As discussed above, a hearing on route adequacy was held on October 8, 2013. Following this hearing and consistent with direction received from the ALJ's order,<sup>22</sup> the Applicants amended their application to include 10 additional routes made from existing, noticed links.<sup>23</sup> No party appealed the ALJ's order. Additionally, Staff witness Michael J. Lee concluded that the Application and Amended Application was adequate and contained an adequate number of alternative routes to conduct a proper evaluation.<sup>24</sup>

#### B. Need

Issue No. 2 of the Preliminary Order asks:

Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition,

- a) How does the proposed facility support the reliability and adequacy of the interconnected transmission system?
- b) Does the proposed facility facilitate robust wholesale competition?
- c) What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed facility?
- d) Is the facility needed to interconnect a new transmission service customer?<sup>25</sup>

As Mr. Lee testified, ERCOT, an independent organization as defined in PURA § 39.151, conducted an independent review of reliability issues in the Lower Rio Grande Valley area of

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<sup>21</sup> Preliminary Order at 3.

<sup>22</sup> SOAH Order No. 6 (Oct. 21, 2013).

<sup>23</sup> See Amended Application.

<sup>24</sup> Lee Direct at 9, 11-12, 34.

<sup>25</sup> Preliminary Order at 3.



Texas and concluded that the proposed project is needed to assure reliability of service in that area.<sup>26</sup>

Moreover, Mr. Lee concluded that the proposed project will facilitate robust wholesale competition to the extent that the proposed project reduces congestion in ERCOT.<sup>27</sup>

### **C. Project Alternatives**

Issue No. 3 of the Preliminary Order asks:

Is the transmission project the better option to meet this need when compared to employing distribution facilities? If Joint Applicants are not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?<sup>28</sup>

Mr. Lee testified that ERCOT did not consider distribution alternatives because such alternatives would not be capable of meeting the identified needs.<sup>29</sup> ERCOT analyzed six transmission alternatives, ultimately recommending the proposed project in its letter to the Applicants, American Electric Power, and the Brownsville Public Utility Board dated January 23, 2012.<sup>30</sup>

## **IV. ROUTE SELECTION**

### **A. Best Alternative Route**

Issue No. 4 of the Preliminary Order asks:

Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B)?<sup>31</sup>

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<sup>26</sup> Lee Direct at 14.

<sup>27</sup> *Id.*

<sup>28</sup> Preliminary Order at 3.

<sup>29</sup> *Id.*; *See also* Application at 12-13.

<sup>30</sup> Lee Direct at 15; Application at 13; Application at Attachment 6.

<sup>31</sup> Preliminary Order at 3.



Weighing the factors set forth in PURA § 37.056(c)(4) and P.U.C. SUBST. R. 25.101(b)(3)(B), Staff recommends approval of Route 1S.<sup>32</sup> This route best balances the factors referenced above and has numerous advantages over the other routes. Staff's analysis considered all of the 42 proposed routes contained in the Application and Amended Application.<sup>33</sup> Because the hearing on the merits focused on three routes – Route 32, Route 3S Modified (Agreed Route), and Route 1S – Staff will likewise narrow its discussion in this brief to those three routes.

### 1. Community Values

The Applicants held seven open houses,<sup>34</sup> with nearly 500 attendees signing in.<sup>35</sup> The attendees' comments, as summarized in the Environmental Assessment (EA), demonstrated that the attendees prioritized maximizing the distance between the transmission line and residences over all other criteria.<sup>36</sup> This criterion is discussed in Subsection 8 (Prudent Avoidance) below.

Moreover, prudent avoidance notwithstanding, Mr. Lee concluded that Route 1S would mitigate as many of the specific concerns expressed by the community at the open houses as would construction of any of the other alternative routes.<sup>37</sup>

Further, the table below summarizes many of the criteria that Mr. Lee discussed under community values in his testimony. As the table shows, Route 1S is either superior or equal to the other two recommended routes in each category.

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<sup>32</sup> Lee Direct at 16.

<sup>33</sup> *Id.* at 8, 16.

<sup>34</sup> Application at 15.

<sup>35</sup> EA at 3-13 – 3-30.

<sup>36</sup> *Id.*

<sup>37</sup> Lee Direct at 17.



	<b><u>Route 32</u><sup>38</sup></b>	<b><u>Route 3S Modified (Agreed Route)</u><sup>39</sup></b>	<b><u>Route 1S</u><sup>40</sup></b>
<b>AM Commercial radio transmitters</b>	0	9	9
<b>FM radio transmitters, microwave towers, or other electrical installations</b>	12	11	9
<b>FAA-registered airports</b>	6	4	2
<b>Private airstrips</b>	1	1	1
<b>Heliports</b>	0	0	0

## 2. Park and Recreational Areas

As the table below shows, Route 3S Modified (Agreed Route) and Route 1S would have a similar effect on park and recreational areas. However, Route 32 impacts a greater number of park or recreational areas.

	<b><u>Route 32</u><sup>41</sup></b>	<b><u>Route 3S Modified (Agreed Route)</u><sup>42</sup></b>	<b><u>Route 1S</u><sup>43</sup></b>
<b>Park or recreational areas (crossed or within 1,000 feet of ROW centerline)</b>	5	2	2

## 3. Historical and Aesthetic Values

The table below summarizes the cultural resources criteria for the three recommended routes. As this table demonstrates, Route 3S Modified (Agreed Route) and Route 1S would impact fewer sites of potential historical significance than Route 32.

<sup>38</sup> EA at Table 4-1.

<sup>39</sup> Joint Applicants Ex. 22.

<sup>40</sup> Amended Application at Table 4-1S.

<sup>41</sup> EA at Table 4-1.

<sup>42</sup> Joint Applicants Ex. 22.

<sup>43</sup> Amended Application at Table 4-1S.



	<b><u>Route 32</u></b> <sup>44</sup>	<b>Route 3S Modified (Agreed Route)</b> <sup>45</sup>	<b><u>Route 1S</u></b> <sup>46</sup>
<b>Recorded cultural resource sites crossed</b>	5	2	1
<b>Additional cultural resource sites within 1,000 feet of ROW centerline</b>	11	3	5
<b>National Register listed sites crossed by ROW centerline</b>	1	0	1
<b>Additional National Register sites within 1,000 feet of ROW centerline</b>	1	0	0
<b>Length of ROW across areas of high archeological site potential</b>	77.7	38.9	37.7

Mr. Lee testified that all alternative routes would have a similar negative impact on the aesthetic values of the study area.<sup>47</sup> The table below summarizes these factors for the three recommended routes.

	<b><u>Route 32</u></b> <sup>48</sup>	<b>Route 3S Modified (Agreed Route)</b> <sup>49</sup>	<b><u>Route 1S</u></b> <sup>50</sup>
<b>ROW within foreground visual zone of US and state highways (as a percentage of total route length)</b>	15.9	14.0	14.0
<b>ROW within foreground visual zone of farm-to-market roads (as a percentage of total route length)</b>	27.5	31.9	34.2
<b>ROW within foreground visual zone of parks/recreational areas (as a percentage of total route length)</b>	10.5	8.8	13.6
<b>Total of above percentages</b>	53.9	54.8	61.8

<sup>44</sup> EA at Table 4-1.

<sup>45</sup> Joint Applicants Ex. 22.

<sup>46</sup> Amended Application at Table 4-1S.

<sup>47</sup> Lee Direct at 19-20.

<sup>48</sup> EA at Table 4-1.

<sup>49</sup> Joint Applicants Ex. 22.

<sup>50</sup> Amended Application at Table 4-1S.



#### **4. Environmental Integrity**

At the hearing on the merits, Texas Parks and Wildlife Department (TPWD) witness Russell L. Hooten was asked to compare only Route 32, Route 3S Modified (Agreed Route), and Route 1S. In response to this question, Mr. Hooten stated:

At this point we're okay with 3S, but I think 1S is our preferred route. Because in addition to avoiding some of the wildlife management tracts and the National Wildlife Refuge tracts, we also look at larger habitat that's, in this case, areas east of U.S. 77 that are coastal prairie, and 1S avoids those areas. That is an important wildlife habitat area. It's not protected in any way [. . .] other than its importance to the ecological integrity of the area.<sup>51</sup>

Additionally, Staff recommends that the final order approving any alternative route contain certain mitigation measures, as included in Mr. Lee's direct testimony and reproduced under Section V (Texas Parks and Wildlife Department Recommendations) below.

#### **5. Engineering Constraints**

Mr. Lee testified that many of the proposed alternative routes would require construction through urbanized or semi-urbanized areas, and would require crossing streams, floodplains, and other transmission lines and roadways.<sup>52</sup> Such crossing might require specially-designed structure foundations and larger or taller than normal structures and span lengths.<sup>53</sup> However, Mr. Lee concluded that such constraints are not severe or uncommon and can be adequately addressed through design and construction practices and techniques usual and customary in the electric utility industry.<sup>54</sup>

#### **6. Cost**

The total cost of the three recommended routes is summarized in the table below. This summary does not take into account the estimated cost associated with the North Edinburg and Loma Alta substations.

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<sup>51</sup> Tr. (Hooten) at 194:16 – 195:2 (Dec. 4, 2013).

<sup>52</sup> Lee Direct at 21.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 21-22.



	<u>Route 32</u> <sup>55</sup>	<u>Route 3S Modified</u> <u>(Agreed Route)</u> <sup>56</sup>	<u>Route 1S</u> <sup>57</sup>
<b>Total cost (in millions)</b>	\$352.2	\$309.3	\$283.6

As this table shows, **Route 1S is approximately \$69 million less expensive than Route 32, and is approximately \$26 million less expensive than Route 3S Modified (Agreed Route).** These cost figures could not be more significant, especially considering that in addition to being \$26 million more than Staff's recommended Route 1S, Route 3S Modified affects 240 additional habitable structures.

## 7. Right-of-Way

The table below compares the three recommended routes' use of existing rights-of-way (ROW). As shown, the three routes make similar use of existing ROW.

	<u>Route 32</u> <sup>58</sup>	<u>Route 3S Modified</u> <u>(Agreed Route)</u> <sup>59</sup>	<u>Route 1S</u> <sup>60</sup>
<b>ROW using existing transmission lines (as a percentage of total route length)</b>	0.0	0.0	0.0
<b>ROW parallel to existing transmission line ROW (as a percentage of total route length)</b>	21.1	27.7	18.9
<b>ROW parallel to other existing ROW (as a percentage of total route length)</b>	37.4	36.2	45.2
<b>ROW parallel to apparent property lines (as a percentage of total route length)</b>	15.6	16.9	14.5
<b>Total of above percentages</b>	74.1	80.7	78.6

<sup>55</sup> Application at Attachment 5.

<sup>56</sup> Joint Applicants Ex. 23.

<sup>57</sup> Amended Application at Attachment 5S.

<sup>58</sup> EA at Table 4-1.

<sup>59</sup> Joint Applicants Ex. 22.

<sup>60</sup> Amended Application at Table 4-1S.



## 8. Prudent Avoidance

Prudent avoidance was a highly significant issue to landowners who attended the open houses and provided written comments.<sup>61</sup> The Commission has defined this term under P.U.C. SUBST. R. 25.101(a)(4) as: “The limiting of exposure to electric and magnetic fields that can be avoided with reasonable investments of money and effort.” The table below summarizes the number of habitable structures that are located within 500 feet of each of the three recommended alternative routes. Route 32 impacts the fewest number of habitable structures. As Mr. Lee testifies, however, this factor must be weighed against other factors before a reasonable decision can be made.<sup>62</sup> Although the impact may be less, the increase cost of \$69 million more than Staff’s route requires a weighing of the benefit with the burden.

	<u>Route 32</u> <sup>63</sup>	<u>Route 3S Modified</u> <u>(Agreed Route)</u> <sup>64</sup>	<u>Route 1S</u> <sup>65</sup>
<b>Habitable structures within 500 feet of ROW centerline</b>	465	951	711

## B. Alternative Routes or Facility Configurations

### 1. Specific Alternatives and Cost

Issue No. 5 of the Preliminary Order asks:

Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?<sup>66</sup>

Within the scope of the three recommended routes, Staff notes that Route 3S Modified (Agreed Route) is the result of modifications to Route 3S based on an agreement between certain

<sup>61</sup> See *supra* at Section V.A.1 (Community Values).

<sup>62</sup> Lee Direct at 32.

<sup>63</sup> EA at Table 4-1.

<sup>64</sup> Joint Applicants Ex. 22.

<sup>65</sup> Amended Application at Table 4-1S.

<sup>66</sup> Preliminary Order at 4.



intervenors, *i.e.*, the signatories to the Joint Stipulation of Agreed and Supporting Parties.<sup>67</sup> As such, it is instructive to compare Route 3S Modified (Agreed Route) with Route 3S in order to better understand the effect of the modifications made.

	<b><u>Route 3S Modified (Agreed Route)</u></b> <sup>68</sup>	<b><u>Route 3S</u></b> <sup>69</sup>
<b>Length</b>	96.1 miles	95.9 miles
<b>Cost (in millions)</b>	\$309.3	\$305.7
<b>Habitable structures</b>	951	879

As the table above shows, the **modifications increased the cost by approximately \$3.6 million, and increased the number of impacted habitable structures by 72** although the overall length remained almost the same.

Approximately \$1.4 million of the increase between Route 3S and 3S Modified (Agreed Route) is solely attributed to the replacement of a portion of link 285 with link 362.<sup>70</sup> This modification was made at the request of Cardenas Realty and R.E.C.L.<sup>71</sup> Staff supports accommodating landowners to the greatest extent reasonable, but it would not be in the public interest to require ratepayers to pay an additional \$1.4 million for an unexplained accommodation to what appears to be a business enterprise.

The remaining \$2.2 million (approximately) of cost increase is not clearly attributed to any specific modification for any particular party.<sup>72</sup>

## **2. Landowner Contributions and Effect on Electric Efficiency and Reliability**

Issue No. 6 of the Preliminary Order asks:

If alternative routes or facility configurations are considered due to individual landowner preference:

<sup>67</sup> Rhodes Alliance Ex. 14.

<sup>68</sup> Joint Applicants Ex. 22; Joint Applicants Ex. 23.

<sup>69</sup> Amended Application at Table 4-1S; Amended Application at Attachment 5S.

<sup>70</sup> Joint Applicants Ex. 24.

<sup>71</sup> Rhodes Alliance Ex. 14 at 10.

<sup>72</sup> Tr. at 162 – 179 (Dec. 2, 2013).



- a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?
- b) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?<sup>73</sup>

Staff is not aware of any landowners who have made or have committed to making financial contributions to offset any incremental cost associated with alternative routes or facility configurations.

## V. TEXAS PARKS AND WILDLIFE DEPARTMENT RECOMMENDATIONS

Issue No. 7 of the Preliminary Order asks:

On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:

- a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?
- b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
- c) What other disposition, if any, should be made of any recommendations or comments?
- d) If any recommendation or comment should not be incorporated in this project or final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.<sup>74</sup>

Certain issues identified by TPWD are discussed in Section IV (Route Selection), Subsection A.4 (Environmental Integrity) above.

TPWD sent Mohammed Ally of the Infrastructure and Reliability Division of the Commission a letter on September 13, 2013 that included its recommendations and informational

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<sup>73</sup> Preliminary Order at 4.

<sup>74</sup> *Id.*



comments regarding the proposed project.<sup>75</sup> In response to TPWD, Mr. Lee recommended that the Commission include standard mitigation measures in its final order. Specifically, Mr. Lee recommended inclusion of the following paragraphs:

1. In the event Joint Applicants or their contractors encounter any archeological artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the Texas Historical Commission (THC). In that situation, Joint Applicants shall take action as directed by the THC.
2. The Applicants shall follow the procedures described in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC) (2006), and the *Avian Protection Plan Guidelines* published by APLIC in April, 2005. The Applicants shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, especially during nesting season.
3. The Applicants shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way. Herbicide use shall comply with rules and guidelines established in the *Federal Insecticide, Fungicide and Rodenticide Act* and with Texas Department of Agriculture regulations.
4. The Applicants shall minimize the amount of flora and fauna disturbed during construction of the transmission project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission project. In addition, Joint Applicants shall revegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, Joint Applicants shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the [United States Fish and Wildlife Service] USFWS.
5. Joint Applicants shall implement erosion control measures as appropriate. Also, Joint Applicants shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner. Joint Applicants shall not be required to restore original contours and grades

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<sup>75</sup>

Lee Direct at 20.



where different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.

6. Joint Applicants shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
7. Joint Applicants shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviation to the approved route shall only directly affect landowners who were sent notice of the transmission line under P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation, excluding public ROWs.
8. Joint Applicants shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, Joint Applicants shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay the project. Unless these two conditions are met, this paragraph does not authorize Joint Applicants to deviate from the approved route except as allowed by the other ordering paragraphs in this Notice of Approval.<sup>76</sup>

Most relevant to TPWD's recommendations and comments are Paragraph Nos. 2, 3, 4 and 6.

## **VI. CONCLUSION**

Staff's recommended route of 1S has numerous advantages over the alternative routes as well as Routes 32 and 3S Modified (Agreed Route) and best meets all the PURA and Commission rule criteria while equitably balancing cost, length, and habitable structures.

These three factors are best differentiated as follows:

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<sup>76</sup>

Lee Direct at 9-10.



	<b><u>Route 32</u></b> <sup>77</sup>	<b><u>Route 3S Modified</u></b> <b><u>(Agreed Route)</u></b> <sup>78</sup>	<b><u>Route 1S</u></b> <sup>79</sup>
<b>Length</b>	117.5 miles	96.1 miles	86.3 miles
<b>Cost (in millions)</b>	\$352.2	\$309.3	\$283.6
<b>Habitable structures</b>	465	951	711

Route 1S is the shortest and least expensive route of the three recommended routes. Route 1S also impacts the second-fewest number of habitable structures of the three recommended routes. While Route 32 would affect fewer habitable structures, Route 32 is also significantly longer and more expensive. Route 32 avoids a large population center by heading almost due west – the opposite direction of its termination point, and is not forward progressing.<sup>80</sup> Moreover, Route 3S Modified (Agreed Route) is longer than Route 1S, is more expensive than Route 1S, and impacts a significantly greater number of habitable structures than does Route 1S.

For all the reasons discussed above, Staff recommends selection of Route 1S.

<sup>77</sup> EA at Table 4-1; Application at Attachment 5.

<sup>78</sup> Joint Applicants Ex. 22; Joint Applicants Ex. 23.

<sup>79</sup> Amended Application at Table 4-1S; Amended Application at Attachment 5S.

<sup>80</sup> See Joint Applicants Ex. 20.

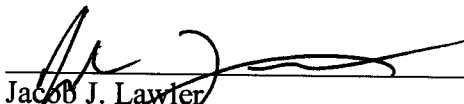


**Dated: December 18, 2013**

Respectfully Submitted,

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**SOAH DOCKET NO. 473-13-5207  
PUC DOCKET NO. 41606**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all applicable parties of record in accordance with SOAH Order No. 4 on December 18, 2013.

  
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Jacob J. Lawler