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PUBLIC HEARING

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

INITIAL BRIEF OF JOHN RANDALL, JR.

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

John Randall Jr. offers this initial brief in the Joint Application of Electric Transmission Texas, LLC (“ETT”) and Sharyland Utilities, L.P. (“Sharyland”) (collectively the “Utilities” or “Companies”) to amend their certificate of convenience and necessity for the North Edinburg to Loma Alta Double-Circuit 345-kV transmission line in Hidalgo and Cameron Counties, Texas.

I. INTRODUCTION AND SUMMARY

Mr. Randall opposes Link 287, which is included in proposed routes 3, 9, 14, 18, 29, and 1S. Link 287 would bisect Mr. Randall’s property and would create a new corridor across the Lower Rio Grande Valley National Wildlife Refuge (“Wildlife Refuge”). The Utilities cannot condemn the federal property. Instead, they must get the U.S. Fish and Wildlife Service’s permission to cross the Wildlife Refuge. The U.S. Fish and Wildlife Service has communicated to the Utilities that it will not authorize the line to cross the Wildlife Refuge as proposed by Link 287. Mr. Randall owns a 65 acre tract of land in Cameron County that will be bisected by a proposed link 287 without following existing right-of-way or other natural property boundaries.¹ Mr. Randall lives on the property with his wife and children in their home along the banks of the

¹ Randall Exhibit 1, Direct Testimony of John Randall at 3-4.

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Resaca bordering a large tract of the Lower Rio Grande Valley National Wildlife Refuge.² Mr. Randall submits that the Modified Supplemental Alternative Route 3S (hereinafter the “Agreed Route”) offers advantages over any route, including avoiding the most problematic crossing of the Wildlife Refuge using Link 287.

To approve an application for a Certificate of Convenience and Necessity (“CCN”) the Public Utility Commission (“Commission” or “PUC”) requires that all of the criteria in PURA § 37.056(c)³ be met and that the factors set forth in P.U.C. Subst. R. 25.101(b) be considered. As will be discussed below, an objective weighing of the applicable factors in this case yields the Agreed Route or any route that does not use Link 287 as the best possible routes for this transmission line.

II. ISSUES TO BE ADDRESSED

A. 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)? [Preliminary Order Issue No. 4]

For a full discussion of the weighing of factors in PURA § 37.056 and PUC Subst. R. 25.101(b)(3)(B) in support of the Agreed Route, Mr. Randall incorporates the Agreed Parties Initial Brief to which he is a signatory. Below is a discussion of how these factors are affected by the use of Link 287 crossing the Randalls’ property and the National Wildlife Refuge.

1. Environmental integrity.

(a) The Utilities’ Application fails to heed warnings from the U.S. Fish and Wildlife Service regarding the the environmental impact on the Lower Rio Grande Valley National Wildlife Refuge

The construction and maintenance of the lines across Mr. Randall’s property and the Lower Rio Grande Valley National Wildlife Refuge would cause a multitude of negative

² *Id.*

³ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 37.056(c) (West 2007 & West Supp. 2013) (“PURA”).

environmental impacts. Of great importance in the study area is the Rio Grande Valley Wildlife Corridor, which is comprised of tracts of land such as state wildlife management areas, national wildlife refuges, municipal parks, and privately-owned land. The Lower Rio Grande Valley National Wildlife Refuge is managed by the United States Department of the Interior Fish and Wildlife Service, which is not subject to state jurisdiction or Commission orders.

While conducting the environmental assessment for this application, Power Engineers communicated with U.S. Fish and Wildlife representatives that manage the portion of the Wildlife Refuge in the study area. U.S. Fish and Wildlife explained to Power Engineers that a “compatibility determination” from the Refuge Manager would be necessary for the Utilities to build across the Wildlife Refuge.⁴ U.S. Fish and Wildlife provided Power Engineers with the relevant regulations and policies associated with the granting of rights-of-ways and easements across the National Wildlife Refuge.⁵ In particular, U.S. Fish and Wildlife pointed Power Engineers to 603 FW 1, “Appropriate Refuge Uses”, which explained that the refuge manager will decide if a new or existing use is appropriate.⁶ The refuge manager will deny a new use if it is not appropriate, without even determining compatibility. Further, the policy states that “if an existing use is not appropriate, the refuge manager will eliminate or modify the use as expeditiously as practicable.”⁷

Early on in the discussions, U.S. Fish and Wildlife told Power Engineers that “the LRGV NWR recommends avoidance of any new proposed transmission lines on Refuge lands.”⁸ In later correspondence, U.S. Fish and Wildlife further explained that the “establishment of a new

⁴ Joint Applicants Exhibit 2, Attachment 1 at page 311 of 1616.

⁵ *Id.* at page 317 of 1616.

⁶ *Id.* at page 318 of 1616.

⁷ *Id.* at page 318 of 1616.

⁸ *Id.* at page 311 of 1616.

power line right-of-way across the Refuge is not an appropriate use as it would result in the direct loss of habitat for wildlife, limit our land management jurisdiction, cause forest fragmentation, and it would create an additional barrier for north-south terrestrial mammal movement.”⁹ Ultimately, the Refuge Manager sent an email to Power Engineers explaining that US Fish and Wildlife “cannot find a new or significantly-expanded right-of-way across the refuge appropriate or compatible. However a collocated line within an existing right-of-way present on the refuge at time of purchase which would not result in an increase in habitat loss could most likely be found compatible.”¹⁰ He explained that “whichever alignment is preferred/recommended will need to be co-located across our lands or it won’t be found compatible.”¹¹ Finally, he warned that if a new right-of-way is required, there will be a processing and evaluation period that could take about a year, but provided only a “50:50” chance that a right-of-way would be issued and called the endeavor a “big risk.”¹²

The Refuge Manager insisted that if the Utilities cannot avoid the property altogether, then the lines would need to be co-located within the existing easement along link 291A for the project to proceed.¹³ This co-location being discussed would allow for the Utilities to construct the 345-kV line as an underbuild within the existing 138-kV line along link 291A within the existing 100 foot easement.¹⁴ While the Randalls would prefer the agreed route that avoids the Wildlife Refuge entirely, the Randalls would be agreeable to the co-location of the line along Link 291A as suggested by the Utilities and supported by U.S. Fish and Wildlife.

⁹ *Id.* at page 389 of 1616.

¹⁰ *Id.* at page 391 of 1616.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at page 362 of 1616.

The witness from Power Engineers, Rob Reid, testified that Link 287 would be the “most problematic” of routes crossing the Wildlife Refuge.¹⁵ Mr. Reid explained that Link 287 “is problematic because it doesn’t follow any existing right-of-way and can’t use any existing right-of-way.” Additionally, Mr. Reid stated that his “recommendation would be for a route that doesn’t cross any federal property, with the exception of IBWC and their easements”.¹⁶

In PUC Docket No. 32871, the Commission approved a Brazos Electric Power Cooperative, Inc. transmission line route that would have crossed property owned by the U.S. Army Corps of Engineers.¹⁷ However, the Army Corps of Engineers ultimately denied Brazos Electric the authority to cross federal property because Brazos Electric had other viable routing options.¹⁸ As a result, Brazos refiled its CCN application seeking to amend the portion that the Commission had previously ordered to cross federal property. In that case, PUC Docket No. 37616, the Commission ultimately denied the application from Brazos Electric, finding that there were an insufficient number of routes filed.¹⁹

To avoid the possibility of having to refile this application, a route that avoids crossing the Wildlife Refuge, such as the Agreed Route, should be selected. However, if a route crossing the Wildlife Refuge must be chosen, the Commission should heed the warnings of U.S. Fish and Wildlife by co-located the line along the existing transmission line along Link 291.

¹⁵ Tr. at 152-153 (Dec. 4, 2013); Tr. at 184 (Dec. 4, 2013).

¹⁶ Tr. at 184 (Dec. 4, 2013).

¹⁷ *Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Denton County, Texas*, Docket No. 32871, Final Order (Nov. 8, 2007).

¹⁸ *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Denton County*, Docket No. 37616, Final Order (Jan. 21, 2011).

¹⁹ *Id.*

(b) Commission Staff's recommendation ignores construction barriers associated with the National Wildlife Refuge

The PUC Staff supported Route 1S, primarily on the basis that it compared favorably in terms of cost and habitable structures compared to the Agreed Route. However, in making this determination, the PUC Staff ignored the warnings from U.S. Fish and Wildlife that Link 287 contained in Route 1S will not be permitted. In contrast, in PUC Docket No. 38230, a Lone Star CREZ transmission line case, the PUC Staff witness Brian Almon testified that he concluded that the Commission should only grant a CCN for a route crossing property of a federal agency if the utility demonstrates that it has obtained permission from the federal agency. No such showing has been made here by the utilities, by their own admission. In fact, the utilities recommend against Route 1S using Link 287 compared to the other routes in light of the concerns expressed by U.S. Fish and Wildlife.²⁰

During the hearing, PUC Staff witness Michael Lee explained that he was “neither comfortable nor uncomfortable in recommending” a route that crosses federally-owned land when the utilities have not demonstrated that they have received permission from the federal agency to cross the Wildlife Refuge.²¹ Furthermore, Mr. Lee conceded that if the Commission selects Route 1S, it is possible that the federal agency would not permit the line to be constructed and this case would have to be refiled.²² The most prudent course of action for the Commission would be to select a route that avoids the National Wildlife Refuge entirely, such as the Agreed Route.

Furthermore, Route 1S uses links that require the second longest crossings of the Wildlife Refuges. Route 1S uses both Links 234 and 287 that cross the Wildlife Refuge for 2,073 feet

²⁰ Tr. at 184 (Dec. 4, 2013).

²¹ Tr. at 221-222 (Dec. 4, 2013).

²² Tr. at 222 (Dec. 4, 2013).

and 6,268 feet, respectively, for a total of 8,341 feet or approximately 1.6 miles.²³ The only other link that crosses the Wildlife Refuge for a comparable distance is Link 281 which also crosses the Wildlife Refuge for approximately 1.6 miles.²⁴ However, unlike Link 287 that follows no existing corridors, Link 281 parallels an existing 69-kV transmission line for much of its distance.²⁵ The other proposed links passing through the Wildlife Refuge are much shorter distances. Link 291A and 291B combine for a distance of 0.7 miles, of which all but 119 feet will be co-located on an existing line.²⁶ The southernmost route using Link 293A, 293B, 293C, and 293D cross a total of 0.2 miles of refuge lands.²⁷

Therefore, the recommendation of Route 1S should be rejected unless Route 1S is amended to use Link 291A instead of Link 287, as requested by U.S. Fish and Wildlife.

2. Community Values.

PUC Subst. R. 25.101(b)(3)(B) states: “an application for a new transmission line shall address the criteria in PURA § 37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to *moderate the impact on the affected community and landowners...*” As described in the Agreed Parties Initial Brief, the Joint Stipulation supporting the Agreed Route was signed by counsel representing over 45 landowners who are agreeing to take the transmission line on their property and 83 landowners who also agree that the Agreed Route is the best route to protect the community values in the area.²⁸ The fact that such a significant number of landowners in the area have agreed to a route that they

²³ Joint Applicants Exhibit 2, Attachment 1 at Appendix A page 364 of 1616.

²⁴ *Id.*

²⁵ *Id.* at page 361 of 1616.

²⁶ *Id.* at page 364 of 1616.

²⁷ *Id.*

²⁸ See Joint Stipulation of Agreed and Supporting Parties (Dec. 2, 2013).

believe is the best route to protect their community is strong evidence that the Agreed Route is the route that best moderates the impact on the affected community and landowners.

More specifically, the use of Link 287 would severely detract from the community values in Cameron County. In addition to using the property as their family home, the Randalls use the property for growing crops and raising Red Brangus cattle and South African Boer goats.²⁹ Because Link 287 cuts through the Randalls' property without following any right-of-way or other natural feature, Link 287 would remove crucial cropland and pasture for livestock that could have a permanent negative impact for the Randall family. The Randalls chose to build their home on the property because it adjoins the refuge, and the natural beauty of the plants and animals make for a wonderful place to raise their family and livestock.³⁰ If a route using Link 287 is chosen, the Randalls' ability to raise crops and graze livestock will be negatively impacted. Additionally, the further destruction of the Wildlife Refuge by clearing a new right-of-way will detract from the community's ability to enjoy the wildlife and natural beauty in the area surrounding their homes. The Wildlife Refuge is a sanctuary for native wildlife such as countless species of migrating and native birds, as well as ocelots, bobcats, coyotes, badgers, beavers, raccoons, rabbits, and other native species. It is host to numerous native plants and vegetation, and the natural plants and wildlife make for a beautiful environment that will be severely impacted by cutting a new path through the Wildlife Refuge.³¹

²⁹ Randall Exhibit 1, Direct Testimony of John Randall at 4.

³⁰ *Id.*

³¹ *Id.*

3. Use of property lines, rights-of-way, or other natural features.

The vast majority of link 287 does not follow any existing corridors. The link follows FM 1577 for about 175 yards along the western boundary of the Randalls' property.³² After this small portion that does parallel FM 1577, the remainder of Link 287 bisects the Randalls' property as well as the Wildlife Refuge without following any property lines, rights-of-way or other natural features. As previously discussed, the fact that Link 287 follows substantially less existing right-of-way will be devastating for the Randalls' use of their property. Further, the U.S. Fish and Wildlife Refuge manager has indicated that the creation of a new right-of-way across the Wildlife Refuge will not be found to be appropriate by the agency.³³

B. Recommendations or Informational Comments from Texas Parks and Wildlife Department [Preliminary Order Issue No. 7]

In his direct testimony, Texas Parks and Wildlife witness Hooten recommended Route 29 or 9S.³⁴ However, during the hearing, Mr. Hooten explained that he selected Route 29 before the route adequacy hearing and the addition of new routes.³⁵ With the addition of the alternate routes (routes 1S through 10S), TPWD witness selected route 9S.³⁶ Therefore, greater consideration should be given TPWD's recommendation of route 9S that avoids more wildlife management areas and national wildlife refuges.

During the hearing, Mr. Hooten explained that the main concerns of TPWD are Links 70 through 84B and wildlife management areas or national wildlife refuges.³⁷ He also expressed

³² *Id.* at 6.

³³ Joint Applicants Exhibit 2, Attachment 1 at page 391 of 1616.

³⁴ Texas Parks and Wildlife Exhibit 1, Direct Testimony of Russell Hooten at 9.

³⁵ Tr. at 197-198 (Dec. 4, 2013).

³⁶ Tr. at 197-198 (Dec. 4, 2013).

³⁷ Tr. at 193-194 (Dec. 4, 2013).

concern regarding the use of Links 329, 338, 357, and 340.³⁸ Of those links, only Link 340 would be used by the Agreed Route. However, Mr. Hooten acknowledged that TPWD would be agreeable to Agreed Route as well.³⁹ Additionally, Mr. Hooten explained that TPWD would not oppose the Agreed Route if the portion of the line that goes into the coastal prairie was marked with bird flight diverters.⁴⁰

Although Mr. Hooten explained that TPWD would be agreeable to Staff's proposed route, 1S, Mr. Hooten indicated that TPWD would also be agreeable to adjusting route 1S to the south using Links 289 and 291 rather than Link 287 to avoid cutting a new path through the Wildlife Refuge.⁴¹

III. CONCLUSION

A preponderance of the evidence supports the selection of the Agreed Route for the construction of the transmission line. Furthermore, any route using Link 287 is not a prudent choice for the construction of this transmission line because U.S. Fish and Wildlife has indicated that it will not permit a new right-of-way along Link 287. If Staff's recommended Route 1S is chosen, the route should be amended to use Links 289 and 291A to follow the request made by U.S. Fish and Wildlife.

³⁸ Tr. at 195 (Dec. 4, 2013).

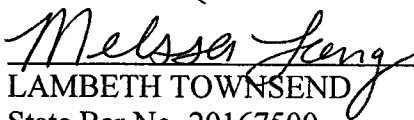
³⁹ Tr. at 194 (Dec. 4, 2013).

⁴⁰ Tr. at 196-197 (Dec. 4, 2013).

⁴¹ Tr. at 195 (Dec. 4, 2013).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Melissa Long, certify that a copy of this document was served in accordance with Order Nos. 3-5 in this proceeding on this 18th day of December, 2013.


MELISSA LONG