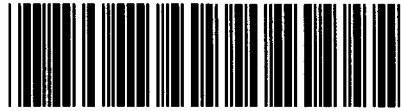




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JOINT APPLICATION OF
ELECTRIC TRANSMISSION TEXAS,
LLC AND SHARYLAND UTILITIES,
L.P. TO AMEND THEIR
CERTIFICATES OF CONVENIENCE
AND NECESSITY FOR THE
PROPOSED NORTH EDINBURG TO
LOMA ALTA DOUBLE-CIRCUIT 345
KV TRANSMISSION LINE IN
HIDALGO AND CAMERON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

§ BEFORE THE STATE OFFICE

§ OF

§ ADMINISTRATIVE HEARINGS

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AGREED PARTIES' INITIAL BRIEF

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Appendix: Proposed Order with Findings of Fact and Conclusions of Law Supporting Agreed Route

I. Introduction and Identification of the Agreed Parties

The Agreed Parties are intervenors in this proceeding with interests that may be directly impacted by the routing of the North Edinburg to Loma Alta 345-kV transmission line that is a part of the Cross Valley Project recommended by the Electric Reliability Council of Texas (ERCOT).¹ The Agreed Parties and their legal counsel in this case are identified as follows:

- Michael Rhodes, ML Rhodes, Ltd., and Rhodes Enterprises, Inc. ("RHODES, ET AL.");
- Paramount Citrus II LLC and Paramount Citrus Packing Company LLC ("PARAMOUNT");
- Jimmie and Barbara Steidinger ("STEIDINGER");
- TVC Donna Groves LLC ("TVC" or "DUDA");
- ADS Donna Groves LLC ("ADS" or "DUDA");
- Anthony E. Gray ("Gray") (for the "Durango Group" in Ranchitos de Weslaco, Phase 2);
- Kevin Campbell ("CAMPBELL") (for La Cuesta Arim, Ltd.; La Cuesta Sol Development, Ltd.; Arturo Martinez; Maria G. Segura; and Tom Moses);
- Francis L. Phillipp ("PHILLIPP");
- Anthony E. Gray ("Gray") (for the "G&M Group" and remaining the "Durango Group");
- G & M Real Estate Co. ("G&M");
- Durango Development, Inc. ("DURANGO");
- Richard L. Gillett and Richard Gillett Family Trust ("GILLETT");
- Jean D. Strait Family LLC ("STRAIT");
- Kevin Campbell ("CAMPBELL") (for all others designating Campbell);
- Tae Sun Lee,

represented by Patrick Reznik and Cassie Gresham;

- John F. Scaief;
- Michael F. Scaief;
- Chaparral Development, Ltd.;
- Scaif Farms, Inc.;
- John F. Scaief Farms;
- Vista Holdings, Ltd.;
- Vista HC, Ltd.;
- Vista MC, LLC;
- RLM HC, Ltd.;
- Resaca Del Monte, Ltd.;
- Leann Hewitt;
- Robert L. Mobley;
- Elizabeth Scaief;

¹ See Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 3 – ERCOT Independent Review of the Sharyland and BPUB Cross Valley Project.

- Steve Scaief;
- Progreso Co-op Gin, Inc.;
- John H. Holcomb;
- Holcomb Farms, Ltd.
- Joe Brymer;
- John A. Holcomb;
- Marvin Fuller;
- Arthur Fuller;
- Carrie Welch;
- Buena Tierra Holdings, LLC;
- Scurlock Construction & Development, LLC;
- San Mateo Investments, LLC;
- San Joaquin Holdings, Inc.;
- Sundown Developments, Inc.;
- Joseph Sekula;
- Guadalupe Maldonado;
- Hidalgo County Irrigation District 5,

represented by Luis Cardenas;

- Russell Plantation, L.P. & J&S Investments, Inc.;
- Cardenas Realty, Hacienda West Phase I, LLC R.E., et al;
- Barreda Park, L.P.;
- Barreda Gardens Partnership, L.P.
- Madeira Properties, Ltd.;
- Mr. and Mrs. Taylor Blanton;
- MCMD, L.P. and 85 Jacaranda, L.P.;
- Milton E. Kincannon
- Frank John Schuster;
- Frank J. and Deborah Lee Schuster;
- Frank Schuster Farms, Inc.;
- Moravia, Inc.;
- Fortco Properties;
- Rio Fresh, Inc.
- Juan Lino Garza, et al;
- C & E Group,

represented by Andres Medrano, Edward D. "Ed" Burbach, and Mark A. Mayfield;

- EIA Properties, Ltd.;
- Stag Holdings, Ltd.;
- Frost Bank and Ben Vaughan, III, Co Trustees of the Genevieve T. Dougherty Trust #2;
- Frost Bank as Trustee of the Melissa Dougherty Trust;
- Wells Fargo Bank, N.A. as Trustee of the Kevin Dougherty Trust;
- Verde Mission, LP and Verde 5801 George McVay, LP,

represented by Andrea Stover, Lauren Damen and Tom Hudson;

- d'Hemecourt Properties, Inc.;
- City of Hidalgo,

represented by Winstead PC (Carrie Collier-Brown and John Arnold);

- City of San Juan,

represented by Kirk Rasmussen;

- Hidalgo County Regional Mobility Authority,

represented by Kay Trostle;

- Hidalgo County Irrigation District No. One.;
- Valle de los Tesoros, Ltd.,

represented by Joseph M. Habbouche;

- Propilusion Investments, LLC;
- Delia Lubin;
- Laura Lubin,

represented by Richard A. Cantu;

- John Randall,

represented by Lambeth Townsend and Melissa Long;

- City of McAllen;
- JLP Investments Trust;
- San Juan Management, LLC;
- San Juan Ventures, Ltd.;
- Los Arboles Ventures, Inc.;
- Eldora Heights, LLC,

represented by Eileen McPhee and Geoffrey Gay;

- Prince Sameer, LLC;
- B.G.S. Naraindas, Inc,

represented by Patricia Hernandez;

- South Texas Independent School District,

represented by George E. Grimes, Jr.;

- Thomas E. and Martha McLemore;
- Kawamura Family, LLC;
- Margarito and Maria Martinez;
- Robert McDonald;
- Simmons, et al,

represented by Chris Boswell;

- William J. Flowers;
- Vancouver Resources, Inc.;
- Carl Zeitler and Mary F. Zeitler;
- Horacio Garza;
- Ana Maria Garza;
- Elizabeth Grace Perez,

represented by Todd W. Boykin and Mindi L. McLain;

- Valley Race Park, LLC,

represented by Katherine Coleman;

- Mil Encinos Development, Ltd.;
- G.E. Bell Properties, Ltd.,

represented by Rene Ruiz;

- Ledesma, Barrera & Smith, LLC,

represented by Javier Ledesma;

- Maquila Trades & Forwarding, LLC,

represented by Antonio Villeda;

- Dr. Homero and Sonia C. Rivas,

represented by Marcus C. Barrera;

- Rio Grande Bible Institute, Inc.,

represented by Thomas D. Koeneke;

- Hidalgo County Irrigation District #6,

represented by Ricardo Pumarejo, Jr.;

- City of Penitas,

represented by Oscar Longoria;

- Advance Heights Developers/ Francisco Vazquez;
- Conquer LAND Utilities, LLC;
- Capstone Land Holdings, Ltd.;
- Jesus and Diana Ruiz, et al;
- Lucia Anaya, Jr.;
- Aploniar and Maria Jesus Grimaldo;
- Ermelinda Resendez;
- Consuelo Maheshwari;
- Eduardo and Belinda Anaya;
- Minera Anaya-St. John;
- Jose Guadalupe Villareal;

- Jesus Lira,
represented by Eduardo Anaya;
- Hidalgo County Water Improvement District No. 3,
represented by R.K. Whittington;
- City of Pharr;
- Pharr Economic Development Corporation, Inc.;
- Pharr Tax Increment Reinvestment Zone,
represented by Michael Pruneda;
- Angel Herrera, Sr.,
represented by Angel Herrera, Jr.;
- United Irrigation District;
- Hidalgo County Irrigation District No. 16,
represented by Robert A. Rima; and
- Rebecca and Dale Klein,
represented by Chris Reeder.
- Doug Martin on behalf of the Martin Family and Monte Cristo Road Partnership

As set forth in the Joint Stipulation of Agreed and Supporting Parties filed on December 2, 2013, the Agreed Parties support the selection of a Modified Supplemental Alternative Route 3S (Agreed Route) in this case for the North Edinburg to Loma Alta transmission line. This route impacts many properties owned by individual members of the Agreed Parties. Although these landowners do not want a 345-kV transmission line routed on their property as a general matter, they are willing to accept it as part of the Agreed Route on the basis that, when all of the record evidence in the case is considered, the Agreed Route best complies with the routing criteria of PURA² and the Commission's Rules and, to a reasonable extent, moderates the impact on the affected community and landowners. As a consensus group, the Agreed Parties oppose selection of any other route that has been presented in this case, including Route 32 favored by the Joint Applicants and Route 1S supported by the Commission Staff.³

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007 & Supp. 2011) (PURA).

³ The position of the Agreed Parties represents a joint consensus to support the route that best resolves the concerns of the intervenor parties to this case. Individual intervenors oppose the specific routes and route links described in their testimony.

The Agreed Parties' Brief primarily addresses Issue Nos. 4-6 of the Preliminary Order relating to routing issues. Issue Nos. 1-3 and 7 are better addressed by the Joint Applicants, Commission Staff, and Texas Parks and Wildlife Department (TPWD) as they relate to the adequacy of the application, the need for the transmission line, and the TPWD recommendation.

II. Summary of Position in Support of the Agreed Route

The Agreed Parties support the Agreed Route, which is a modified version of Route 3S filed by the Joint Applicants in their Amended Application in Response to Order No. 6, for the following reasons:

- The Agreed Route best represents the community values in the study area as it is the result of numerous impacted landowners agreeing for the line to be routed on their property.
- The Agreed Route is shorter in length and cheaper in cost than any of the 32 routes filed in the Application and is comparable in length and cost to the 10 supplemental routes.
- Like all of the Alternate Routes presented by the Joint Applicants, the Agreed Route impacts a relatively high number of habitable structures compared to other transmission line cases due to the density of development in the Lower Rio Grande Valley (LRGV) area; compared to the other Alternate Routes, however, the number of habitable structures impacted by the Agreed Route is within the lowest third of all the routes and is reasonable given the constraints of the study area and the links studied and noticed by the Joint Applicants.
- The Agreed Route has the least harmful impacts on the land use in the study area when agricultural, residential, and commercial development uses are considered.
- The Agreed Route parallels existing transmission line infrastructure for a significant portion of its total length.
- Over 80% of the Agreed Route is parallel to existing easements or property boundaries.
- The Agreed Route is acceptable to Texas Parks and Wildlife Department from an environmental perspective.

III. Description of the Agreed Route

The Agreed Route is comprised of the following Links: 134-136a-355-137b-138-141-147-152-155-162-165-169-193a-193b-361-351b-193c-194-201-207-208-209-212-214-219-226-233-235-256-258-265-286-285-362 -279-278-268-267-273-308-321-322-327-328-335-340-341. All of the links were noticed in the Application with the exception of 362 which is a small link connecting two noticed links that is located on and impacts only property owned by two of the Agreed Parties. Additionally, some modifications proposed by members of the Agreed Parties are incorporated into the Agreed Route and have been deemed viable and constructible by the Joint Applicants. None of these modifications require the consent or notice of parties that were not provided notice of the Application.

A. Identification of Agreed Parties Impacted by Each Link

The Agreed Route represents a compromise and settlement among numerous landowners, municipalities, and other entities with land interests in the study area presented by the Joint Applicants in their Application to construct the North Edinburg to Loma Alta 345-kV transmission line. The Agreed Route does not avoid the property interests of the Agreed Parties; rather it impacts many of those interests in the least detrimental manner possible given the constraints of the study area. The Agreed Parties impacted by links of the Agreed Route are identified as follows:

Link No.	Agreed Party Impacted	Link No.	Agreed Party Impacted
136a	EIA Properties, Ltd. and Stag Holdings Ltd.	219	Phillipp
141	Buena Tierra Holdings, LLC	226	
147	Rhodes, et. al.	267	Scaief Farms, Inc. and Michael Scaief
152	Paramount Citrus Steidinger	268	
155	Steidinger DUDA	285	Resaca Del Monte, Ltd.
169	Hidalgo County Regional Mobility Authority	308	Kevin Campbell Russell Plantation, L.P.
		327	Kevin Campbell
		355	EIA Properties, Ltd. and Stag Holdings Ltd. Doug Martin, Martin Family Partnership, and Monte Cristo Road Partnership
193c	G&M, Durango and Gray	362	Cardenas Realty, R.E.C.L.

194	d'Hemecourt Properties, Inc. Holcomb Farms, Ltd. John Holcomb	various	Hidalgo County Irrigation District No. 5 Hidalgo County Irrigation District No. 1
201	Holcomb Farms, Ltd. John Holcomb		

All of the intervenors represented by counsel in this case that filed testimony or a statement of position have joined in supporting the Agreed Route. Only two pro se intervenors who filed statements of position did not elect to join the stipulation supporting the Agreed Route. These intervenors are Sierra Citrus, impacted by Link 141, and Jose Rodriguez, impacted by Links 278 and 279. The Agreed Parties attempted to work with these pro se intervenors to address their concerns and offer potential modifications to the Agreed Route to lessen its impact upon their property in a manner identical to that in which many of the Agreed Parties have worked to minimize the impacts that the Agreed Route will have as it traverses their properties. Discussions with Sierra Citrus did not result in an agreement, however, and Mr. Rodriguez declined to engage in any discussion of the matter with the Agreed Parties. Neither intervenor presented evidence or appeared at the Hearing on the Merits.

B. Identification of Agreed Modifications

As identified in Joint Applicants' Exhibit No. 24, Link 285 has been modified to better follow the property boundaries of two landowners who, as members of the Agreed Parties, are agreeing to the routing of the line on their land as part of the Agreed Route. A new Link 362 has been developed to parallel the western property boundary of a tract owned by Michael Scaief, then cross a tract owned by R.E.C.L., Inc. parallel to the northern boundary of that property. Link 362 then joins with Link 279 and continues to progress north on that link without additional modification. The modification to Link Nos. 285 and 279, which results in the addition of Link 362, does not affect any other landowner besides Mr. Scaief and R.E.C.L. and does not route the line within 500-ft of any habitable structure. In fact, the modification moves the line more than 500-ft away from 10 habitable structures that were within 500-ft of the centerline of Link 272 as originally filed and noticed.⁴

⁴ See Attachment 9b to the Application, Cameron County Sheet 37.

IV. Comparison of Agreed Route to Other Routes Based on Routing Factors

The Agreed Route compares favorably to the other alternate routes presented in the Application and Amended Application by the Joint Applicants. Although none of the alternative routes presented in this case are superior to all other routes in *every respect*, when considering the routing factors of PURA and the Commission's Rules as a whole, the cost estimates of the alternate routes, and the expression of community values represented by the unification of the vast majority of intervening landowners, municipalities, and utility districts participating in this case in support of the Agreed Route, the Agreed Route is a superior choice and should be approved by the ALJ and the Commission.

All of the parties that filed testimony and participated at the Hearing on the Merits in this case supported the Agreed Route with the exception of the Joint Applicants and Commission Staff. While the Joint Applicants did not directly oppose the Agreed Route they did continue to maintain that Route 32 was a better choice due to the fact that it is routed somewhat closer to the South McAllen substation than the Agreed Route. The South McAllen substation issue will be discussed at length in Section VI of this brief. The Commission Staff supported Route 1S, primarily on the basis that it cost somewhat less than the Agreed Route and that its centerline passed within 500-ft of fewer habitable structures. A comparison of the Agreed Route with Routes 32 and 1S is shown below, drawing route data from Table 4-1 of the Environmental Assessment to the initially filed Application, Table 4-1S filed with the Amended Application, and Joint Applicants' Exhibit No. 22 introduced at the Hearing on the Merits. Cost information from the Application and Joint Applicants' Exhibit No. 23 is also included.

Routing Factor	Agreed Route	Route 32	Route 1S
Land Use			
Length of alternate route	96.1	117.5	86.3
Estimated Cost of Route (rounded to nearest million)	\$309m	\$352m	\$284m
Number of habitable structures within 500-ft of centerline	951	465	711
Length of ROW parallel to existing transmission line ROW	26.6	24.8	16.3
Percentage of length of ROW parallel to existing transmission line ROW	27.7%	21.1%	18.9%
Length of ROW parallel to other existing ROW	34.8	44.0	39.0
Length of ROW parallel to apparent property lines	16.2	18.3	12.5
Percentage of length of ROW parallel to all existing ROW and property lines	80.8%	74.1%	78.6%

Length of ROW through parks/recreational areas	0	0	0.3
Number of parks/recreational areas within 1000-ft of ROW*	0	5	1
Length of ROW through cropland	58.3	70.8	52.1
Length of ROW through orchards	4.1	4.1	3.9
Number of pipeline crossings	32	91	50
Number of transmission line crossings	18	29	19
Number of US and State highway crossings	11	9	14
Number of farm-to-market road crossings	12	18	15
Aesthetics			
Estimated length of ROW within foreground visual zone of US and State highways	13.5	18.7	12.1
Estimated length of ROW within foreground visual zone of farm-to-market roads	30.7	32.3	29.5
Estimated length of ROW within foreground visual zone of parks/recreational areas	8.5	12.3	11.7
Ecology			
Length of ROW through upland woodland	0.5	5.0	2.5
Length of ROW through bottomland/riparian woodlands	1.5	1.8	1.4
Length of ROW across mapped NWI wetlands	2.2	2.5	.9
Length of ROW across known habitat of federally listed endangered or threatened species	12.0	14.8	3.1
Number of stream crossings	5	4	6
Cultural Resources			
Number of recorded cultural sites crossed by ROW	2	5	1
Number of additional recorded cultural sites within 1000-ft of ROWc	3	11	5
Number of National Register listed sites crossed by ROW*	0	1	1
Number of additional National Register listed sites within 1000-ft of ROW*	0	1	0
Length of ROW across areas of high archeological site potential	38.9	77.7	37.7

*Right-of-Way centerline

The bolded data in the above table demonstrate areas where the Agreed Route is superior to Routes 32 and 1S in relation to its overall impacts. Notably, there are many categories where the differences between these alternate routes are minor such as the number of stream crossings and road crossings as well as visual zone impacts from major roads. Other categories show more significant differences, however, such as the Agreed Route's paralleling of existing transmission lines for almost 10% more of its total length than Route 1S.

A. Length and Cost

The supplemental routes filed in the Amendment to the Application are predominately shorter and less costly than the 32 alternate routes initially presented by the Joint Applicants in the Application. The Agreed Route is over 20 miles shorter than Route 32 and more than \$40 million less expensive. Route 1S uses a set of links very similar to the Agreed Route as it traverses from the North Edinburg substation to the east of the City of McAllen and into Cameron County. The routes diverge in Cameron County, as Route 1S takes a southern course through that portion of the study area and the Agreed Route takes a northern path, paralleling an existing 138-kV line for the majority of its length as it moves towards the Loma Alta substation. Route 1S is shorter and less costly than the Agreed Route, though both compare very favorably in this regard when compared to Route 32. Importantly, Route 1S does not take into account *any* of the intervenor landowner concerns expressed in testimony filed by many of the Agreed Parties and Staff's support for that route is based almost exclusively on the factors of cost and the number of habitable structures in close proximity to the alternate routes.⁵

B. Prudent Avoidance

The number of habitable structures identified by the Joint Applicants that are within 500 feet of the centerline of the 43 Routes⁶ examined in this proceeding range from 465 to 1,818.⁷ Given the density of development and population in the study area, all of these alternative routes minimized, to the extent reasonable, the number of habitable structures located in close proximity to the routes.⁸ The Joint Applicants identified 951 habitable structures within 500 feet of the centerline of the Agreed Route, which places it at the 15th lowest out of the 43 routes.⁹ Of those 951 habitable structures, 793 are not currently within 500 feet of an existing transmission line (*i.e.*, they are "newly affected").¹⁰

⁵ Tr. at 202-203, 214.

⁶ 32 routes in original application; 10 in supplemental application; and the Agreed Route (3S Modified).

⁷ Staff Ex. 1, M. Lee Direct at 30 – 32; and Joint Applicants Ex. 22.

⁸ Staff Ex. 1, M. Lee Direct at 32:3-6.

⁹ Staff Ex. 1, M. Lee Direct at 30:13 – 32:2; and San Juan Ex. 4 (Table 4-1 (Links) Environmental Data for Route Evaluation) The range of habitable structures by link along the Agreed Route ranges from 0 to 371; and 31 of the links affect 10 or fewer habitable structures.

¹⁰ Joint Applicants Ex. 22.

Among the 47 Links that make up the Agreed Route, Link 169 accounts for 39 percent, or 371,¹¹ of the 951 habitable structures on the Agreed Route. All 371 habitable structures on Link 169 are “newly affected,”¹² accounting for 47% of the 793 “newly affected” habitable structures along the Agreed Route. Link 169 falls within 500 feet of the highest number of habitable structures among all of the Links on the Agreed Route.¹³

Hidalgo County Regional Mobility Authority (HCRMA) is the only intervenor with a property interest along Link 169. Due to a conflict between HCRMA’s proposed International Bridge Trade Corridor (“IBTC”) Project and Link 169,¹⁴ the Joint Applicants and HCRMA have agreed, assuming HCRMA has acquired the land in fee simple along Link 169 by March 31, 2015, that HCRMA will grant ETT an easement on HCRMA property and ETT will locate the transmission line within that easement.¹⁵ HCRMA issued \$63 million in bonds shortly before the hearing in this matter, which will allow HCRMA to start the acquisition of right-of-way (in fee simple) for the IBTC Project beginning as early as the second quarter of 2014.¹⁶ The land to be acquired by HCRMA for the IBTC project is on Link 169 between Interstate 2/U.S. Highway 83 and the Donna Reservoir.¹⁷ As part of the IBTC Project, HCRMA will acquire the residences along Link 169 that are within its right-of-way and provide relocation assistance to move residences to allow sufficient right-of-way for the IBTC roadway.¹⁸ Therefore, it is reasonable to assume that HCRMA will be the owner of the land upon which many of the 371 habitable structures along Link 169 are sited, by the time ETT needs to acquire that right-of-way and hence HCRMA will be responsible for relocating those habitable structures. By placing the transmission line within the HCRMA easement, ETT avoids the need to move any habitable structures, because HCRMA will relocate all residences that are within its right-of-way. The Joint Applicants acknowledge that HCRMA has the statutory authority to order electric utilities to relocate transmission facilities if required for highway improvements,¹⁹ and the proposed

¹¹ See, Joint Applicants Ex. 2 (EA) Attachment 1 at Fig. 5-1, Sheet 4 of 6 (map shows habitable structures with property ID numbers, on Link 169).

¹² Joint Applicants Ex. 22.

¹³ San Juan Ex. 4 (Table 4-1 (Links) Environmental Data for Route Evaluation).

¹⁴ HCRMA Ex. 1 (P. Rodriguez Direct) at 2:28-29, and 9:16-26.

¹⁵ Joint Applicants Ex. 18 (T. Trotman Rebuttal) at 2: 10 – 4:11.

¹⁶ HCRMA Ex. 1a (P. Rodriguez Supplemental Direct) at 2:14 – 22.

¹⁷ HCRMA Ex. 1a at 3:1-6.

¹⁸ HCRMA Ex. 1a at 3:7 – 11.

¹⁹ Joint Applicants Ex. 18 at 3:1-5; and HCRMA Ex. 1 at 7:9 – 8:2.

coordination between Joint Applicants and HCRMA will avoid the need to move transmission structures along Link 169, which in turn avoids the need to de-energize the line.²⁰

In addition to the Agreed Route, Link 169 is also included in each of the following Routes examined in this case:

(1) among the Joint Applicants' Supplemental Routes which forward progress from the North Edinburg Substation eastward to the Loma Alta Substation: Routes 1S (supported by PUC Staff), 2S, 3S (before modification to become Agreed Route), 8S, 9S, and 10S;²¹ and

(2) among the original routes identified by Joint Applicants, Link 169 is included in Routes 25, 26, 27, 28, 29, and 30.²² These six original routes that include Link 169 all exit the North Edinburg Substation to the east.

Among the eastern routes, including those routes as originally filed and the supplemental routes, the alternative to Link 169 is Link 166. The supplemental Routes that utilize Link 166 instead of Link 169 are Routes 4S, 5S, 6S and 7S. Among the original routes that exit the North Edinburg Substation to the east, in addition to the six identified above that utilize Link 169, the remaining five that utilize Link 166, instead of Link 169, are Routes 20, 21, 22, 23, and 24.²³ Link 166 would be within 500 feet of 426 habitable structures, which are 55 more habitable structures than along Link 169.²⁴ No party supported approval of any route that includes Link 166.²⁵ In sum, eastern routes must utilize either Link 166 or 169. A comparison of those two Links demonstrates Link 169 better satisfies the policy of prudent avoidance and is consistent with Community Values, as evidenced by the support of the Intervenors and PUC Staff for eastern routes that include Link 169.

There are six habitable structures that are within 75 feet of the proposed centerline of the Agreed Route and which therefore may have to be relocated;²⁶ five of those are on Link 169.²⁷

²⁰ Tr. 156: 21-23.

²¹ See, Joint Applicants Ex. 11 (Amended Application) at 30 (Table 3-1S Link Composition for Primary Alternative Routes).

²² Joint Applicants Ex. 2, Environmental Assessment, page 3-34 to 3-35.

²³ Joint Applicants Ex. 2, Environmental Assessment, page 3-34 to 3-35.

²⁴ San Juan Ex. 4 (Table 4-1(Links) Environmental Data for Route Evaluation).

²⁵ The City of San Juan and other parties actively oppose selection of any route utilizing Link 166.

²⁶ Joint Applicants Ex. 22.

²⁷ San Juan Ex. 4; Tr. 155:15-20 (Reid); and Joint Applicants Ex. 2 (EA), Attachment 1, Vol. 1 of 2, Appendix C, Habitable Structures and Other Land Use Features in the Vicinity of the Routes, Tables 5-2 through 5-33, see, e.g., Table 5-27 at pages 801-810 which lists the Habitable Structure numbers along Link 169 (#4247 through

All of the habitable structures that may have to be re-located along Link 169 are mobile homes.²⁸ Assuming HCRMA acquires its right-of-way for the IBTC Project along Link 169 and grants ETT an easement within the HCRMA right-of-way, as anticipated,²⁹ HCRMA would relocate all habitable structures within its right-of-way, obviating the need for ETT to do so. In the unlikely event HCRMA does not acquire the right-of-way for the IBTC Project by March 31, 2015, Joint Applicants will work with the landowners on whose property the six habitable structures are located to either move the habitable structures on the same property so that they are no longer within the transmission line right-of-way, or relocate the habitable structure to another location.³⁰

The numbers of habitable structures within 500-ft of the centerlines of all of the alternate routes presented in this case are high due to the relative density of development in the LRGV area. Of the routes filed in the Application, Route 32 impacted over 200 fewer habitable structures than the next lowest number impacted by any filed route and was only one of 4 of the 32 alternate routes presented that impacted fewer than 800 habitable structures. Witnesses for the Agreed Parties and Commission Staff³¹ were not familiar with another transmission line CCN case where the difference between the route favored by the applicant(s) and the other proposed alternate routes was so severe.

In the route adequacy testimony of Rudi Reinecke presented by a number of the Agreed Parties identified as the Joint Landowners, a modification to Link 169 was examined which would have decreased the number of habitable structures impacted by almost 300.³² Mr. Reinecke also presented evidence regarding a "Canal Link" that would have impacted fewer habitable structures than either Link No. 166 or 169 as a routing option east of the City of McAllen.³³ Utilization of these modified and alternate links would have required an abatement and/or re-filing of the Application subsequent to the Route Adequacy hearing. While that did not occur, the testimony regarding these links demonstrates that the Agreed Parties have endeavored

#4609) [five structures listed on pages 805 and 806 have footnote "2" associated with them, which indicates those structures are within 75 feet of the centerline]; four of those habitable structures (# 4402, 4403, 4416, and 4417) are "trailer homes" and the fifth (#4449) is "RV on RV park pad". See, also, Joint Applicants Ex. 2 (EA), Vol. 2 of 2, Fig. 5-1, Sheet 4 of 6 (aerial photo indicating habitable structures by number along Link 169 and other links in that vicinity). The sixth habitable structure on the Agreed Route that is within 75 feet of the centerline is on Link 273 in Cameron County.

²⁸ Tr. 155:15-20 (Reid).

²⁹ Joint Applicant Ex.

³⁰ Tr. 98:13 – 100:5 (Caskey).

³¹ Tr. at 216-217.

³² Route Adequacy Testimony of Rudolph K. "Rudi" Reinecke at 11.

³³ *Id.* at 9.

to minimize the number of habitable structures impacted by the routing options in this case to the extent feasible while also balancing their other concerns regarding the impact of the transmission line on the use and value of the properties impacted. Overall, though the Agreed Route does not impact the fewest habitable structure of the alternate routes, its impact is reasonable given the nature of the study area and well in accordance with the Commission's policy of prudent avoidance.

C. Environmental Impacts

The Lower Rio Grande Valley area is rich with wildlife habitats and natural resources. 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.³⁴ To protect the native wildlife habitat from the increasing development in the area, agencies such as Texas Parks and Wildlife Department ("TPWD") and the United State Fish and Wildlife Service ("USFWS") have established the Rio Grande Valley Wildlife Corridor. The over 100 tracts of land making up the corridor are managed to benefit the wildlife by serving as habitats with food, water, and nesting sites.³⁵

The Agreed Route avoids crossing the Lower Rio Grande Valley National Wildlife Refuge ("LRGV NWR") completely by passing to the south of the smaller tract along Link 235 and north of the larger tract along Link 268. However, PUC Staff's recommended route, 1S, would bisect two tracts of the LRGV NWR in the study area using Link 287 without following any existing right-of-way or other corridors and Link 234 paralleling an existing transmission line through the LRGV NWR. During the hearing, the Utilities' witness from Power Engineers, Rob Reid, testified that Link 287 would be the "most problematic" of routes crossing the Wildlife Refuge.³⁶ 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 explained that his "recommendation would be for a route that doesn't cross any federal property, with the exception of IBWC and their easements."³⁷

³⁴ *Id.*

³⁵ *Id.* at 11-12.

³⁶ Tr. at 152-153 (Dec. 4, 2013); Tr. at 184 (Dec. 4, 2013).

³⁷ Tr. at 184 (Dec. 4, 2013).

While conducting the environmental assessment for this application, Power Engineers communicated with USFWS regarding crossing the federally owned LRGV NWR. USFWS explained to Power Engineers that a “compatibility determination” from the Refuge Manager would be necessary for the Utilities to build across the Wildlife Refuge.³⁸ Early on in the discussions, USFWS told Power Engineers that “the LRGV NWR recommends avoidance of any new proposed transmission lines on Refuge lands.”³⁹ In later correspondence, USFWS further explained that the “establishment of a new 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.”⁴⁰ In the final communication with Power Engineers, the Refuge Manager sent an email to Power Engineers explaining that USFWS “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.”⁴¹ He explained that “whichever alignment is preferred/recommended will need to be co-located across our lands or it won’t be found compatible.”⁴² 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.”⁴³ 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.⁴⁴ This colocation 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.⁴⁵

Federal agencies are not subject to state jurisdiction or Commission orders. Therefore, Staff’s recommended route, 1S, can only be constructed if USFWS determine that the use of the property is appropriate and compatible. However, USFWS has stated that it will not find the

³⁸ Joint Applicant Exhibit 2, Attachment 1 at Appendix A, page 312 of 1616; page 344 of 1616.

³⁹ Joint Applicant Exhibit 2, Attachment 1 at Appendix A, page 312 of 1616.

⁴⁰ Joint Applicant Exhibit 2, Attachment 1 at Appendix A at page 389 of 1616.

⁴¹ Joint Applicant Exhibit 2, Attachment 1 at Appendix A at page 391 of 1616.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Joint Applicant Exhibit 2, Attachment 1 at Appendix A at page 362 of 1616.

new right-of-way required for Link 287 appropriate or compatible. PUC Staff witness Lee conceded that it is possible that the federal agency may not permit the construction of the line, forcing this case to be re-filed.⁴⁶ This situation occurred in PUC Docket Nos. 32871 and 37616 where the Commission approved a CCN crossing property owned by the United States Army Corps of Engineers ("USACE"). The USACE denied Brazos Electric Cooperative the right to cross the federal property and the utility was forced to refile its CCN application.⁴⁷

As described by TPWD witness Russell Hooten, no proposed route avoids all impacts to wildlife habitat. TPWD recommended selection of a route that would avoid or minimize adverse impacts to wildlife habitat.⁴⁸ During the hearing, TPWD witness Hooten explained that the main concerns of TPWD are links 70 through 84B and wildlife management areas or national wildlife refuges.⁴⁹ He also expressed concern regarding the use of links 329, 338, 357, and 340.⁵⁰ Of those links, only link 340 would be used by the Agreed Route. However, Mr. Hooten acknowledged that TPWD would be agreeable to the Agreed Route.⁵¹ Additionally, Mr. Hooten explained that TPWD would not oppose the Agreed Route if the line that goes into the coastal prairie was marked with bird flight diverters.⁵²

Because the Agreed Route satisfies U.S. Fish and Wildlife by avoiding the LRGV NWR entirely and is agreeable to TPWD, the Agreed Route should be approved in this proceeding.

D. Aesthetics/Land Use

The table at the beginning of this section that compares the routing factors between the Agreed Route and Routes 32 and 1S demonstrates that the Agreed Route moderates to the extent possible negative impacts on the aesthetics and land uses of the property crossed by the line. Over a quarter of the length of the Agreed Route parallels existing transmission lines, which reduces the length of the line where a new aesthetic impact is created. Over 80% of the line parallels either existing transmission lines or other compatible easements or boundaries, the highest of the three routes compared. The Agreed Route also has the fewest number of

⁴⁶ Tr. at 222 (Dec. 4, 2013).

⁴⁷ *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 (Jan. 21, 2011).

⁴⁸ *Id.*

⁴⁹ Tr. at 193-194 (Dec. 4, 2013).

⁵⁰ Tr. at 195 (Dec. 4, 2013).

⁵¹ Tr. at 194 (Dec. 4, 2013).

⁵² Tr. at 196-197 (Dec. 4, 2013).

transmission line crossings. This reduces negative land use impacts as the line will predominately extend through areas where land use is constrained rather than creating new swaths of land that cannot be developed that bisect properties and reduce the usefulness of the divided sections. The impact of the Agreed Route to land being used as cropland is favorable in comparison to Route 32 and comparable to Route 1S. The Agreed Route has the shortest length within the foreground visual zone of parks and recreational areas of the routes compared and has closely comparable length within the foreground visual zones of highways and farm-to-market roads.

All of the Agreed Parties have filed direct testimonies in this case, most describing in detail the features and use of their property and the impacts that could occur if the North Edinburg to Loma Alta transmission line were routed there. These impacts include crossing valuable and productive agricultural land, possibly by multiple routes in close proximity if a "loop" to the South McAllen substation is incorporated⁵³ or by routing the new line over an existing transmission line, resulting in multiple non-parallel transmission lines running perpendicular to one another across agricultural land, if Route 1S is approved.⁵⁴ Other potential impacts include paralleling and ruining for residential development Resaca-front property in Cameron County,⁵⁵ crossing within the foreground visual zone of property used for commercial purposes directly related to the property's beauty and natural state,⁵⁶ and crossing property where advanced stages of residential and commercial development have already occurred with significant investments, potentially causing that development to be dramatically impeded and those investments lost.⁵⁷

When all of the evidence is considered, including the detailed testimony by the many intervenors among the Agreed Parties who own land that will be impacted by the Agreed Route, the moderation of impacts on the aesthetics and land use within the study area is best accomplished by approval of the Agreed Route.

⁵³ See Fortco Properties Exhibit 1, Rio Fresh Exhibit 1, Frank Schuster Farms Exhibit 1, C&E Group Exhibit 1.

⁵⁴ See Zeitler Exhibit 1.

⁵⁵ See Kincannon Exhibit 1.

⁵⁶ See Blanton Exhibit 1.

⁵⁷ See Cardenas Realty Exhibit 1, Russell Plantation Exhibit 1, Barreda Gardens and Barreda Park Exhibit 1, Madeira Properties Exhibit 1, and MCMD, L.P. and 85 Jacaranda L.P Exhibit 1.

E. Community Values

Pursuant to PURA § 37.056(c)(4)(A), the Commission may consider community values in determining what route to choose. P.U.C. 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* unless grid reliability and security dictate otherwise.” As a concept, community values have been defined as “a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community.”⁵⁸ This factor is important in the present case given that the route alternatives for the proposed line are all located in a rapidly growing urbanizing area. The Agreed Route best meets the criteria for community values since all but two of the affected landowners have signed an agreement to accept the transmission line on their properties.⁵⁹

The Agreed Route is an all-but unanimous consensus of the property owners, local governments, and agents of urban change that are intervenors in this case. This group takes in a wide cross-section of residents in a wide arc from Cameron County to Hidalgo County. The coalition of these parties has arrived at a consensus for the Agreed Route because it represents the best over-all configuration, taking into account multiple interests—those of individual property owners both residential and commercial, those of local government infrastructure agencies from airports to roadways to drainage canals, and those of city governments and developers. These members of an interconnected local community collectively have an understanding and shared appreciation for the best resolution of the multiple impacts this line will have on their lives. Their community effort and resultant agreement on the Agreed Route deserves consideration as a clear manifestation of community values.

As the number of Intervenor in this docket has demonstrated, the routing of the 345-kV transmission line through Hidalgo and Cameron counties by the Joint Applicants has been a very difficult task. Despite the difficulty, there is a consensus among the landowners in this docket

⁵⁸ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, P.U.C. Docket No. 33844, Final Order at 15, Finding of Fact 65 (Mar. 4, 2008).

⁵⁹ All of the landowners that filed direct testimony and are affected by the Agreed Route have signed the Joint Stipulation of Agreed and Supporting Parties filed on December 2, 2013. There are only two landowners who are affected by the Agreed Route, Sierra Citrus and Jose Rodriguez, that have not signed the Joint Stipulation. These two landowners only filed Statements of Positions in this case, both chose not to appear at the Final Hearing on the Merits.

that the Joint Applicants should use an eastern route. A Joint Stipulation was filed on December 2, 2013⁶⁰ which demonstrated the affected landowners' willingness to accept the transmission line on their properties if the Agreed Route is chosen. The Joint Stipulation was signed by counsel representing over forty-five (45) landowners who are agreeing to take the transmission line on their properties and by eighty-three (83) landowners who, although not directly affected by the transmission line, agree that the Agreed Route is the best route to protect the community's values.⁶¹ The landowners in this case are very familiar with their community and the challenges of routing a transmission line through such a densely populated area. Many of the landowners in this docket have agreed to take the transmission line on their properties because they believe that the Agreed Route is the best route for their communities and therefore are willing accept the transmission line on their properties for the overall good of the community. The landowners' agreement to the Agreed Route and and their willingness to take the transmission line on their properties is the best demonstration of community values.

F. Utilization/Paralleling of Compatible Rights of Way

The Agreed Route is favorable with regard to utilization/paralleling of compatible rights-of-way. While the Agreed Route does not use any length of existing transmission line right-of-way, this is typical for the routes proposed in this proceeding.⁶² Thirty-eight other alternate routes also do not use any length of existing transmission line right-of-way.⁶³ Only four alternate routes use any length of existing transmission line right-of-way at all, and for these routes, less than a mile is used (the longest is 0.65 miles).⁶⁴

The Agreed Route parallels existing transmission line right-of-way for 26.6 miles.⁶⁵ The Agreed Route parallels more existing transmission line right-of-way than 25 of the routes under consideration in this proceeding.⁶⁶ In fact, the Agreed Route parallels existing transmission line right-of-way for over a quarter of its total length of 96.1 miles.⁶⁷

⁶⁰ *Id.*

⁶¹ See Joint Stipulation of Agreed and Supporting Parties filed on December 2, 2013.

⁶² Joint Applicants' Ex. 22.

⁶³ Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁶⁴ *Id.*

⁶⁵ Joint Applicants' Ex. 22.

⁶⁶ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁶⁷ Joint Applicants' Ex. 22.

Finally, the Agreed Route parallels other existing rights-of-way (such as highways, pipelines, railways, and canals) for 34.8 miles, or more than a third of its total length.⁶⁸

Therefore, the Agreed Route compares favorably to other routes with respect to using/paralleling existing compatible rights-of-way.

G. Paralleling of Property Lines or Other Natural or Cultural Features

The Agreed Route performs favorably with regard to paralleling property lines. The Agreed Route parallels apparent property lines for 16.2 miles or 17% of its total length.⁶⁹ In this respect, it outperforms 18 other routes under consideration in this proceeding.⁷⁰

H. Recreational and Park Areas

The Agreed Route respects the integrity of recreational and park areas within the study area. The Agreed Route does not traverse through the length of *any* parks/recreational areas.⁷¹ By contrast, 20 of the other routes under consideration do traverse through parks/recreational areas.⁷²

Similarly, the Agreed Route does not cross over any parks/recreational areas.⁷³ By contrast, 20 of the other routes under consideration cross through at least one park/recreational area (up to as many as five parks/recreational areas.)⁷⁴

Finally, there are only two parks/recreational areas within 1,000 feet of the right-of-way centerline of the Agreed Route.⁷⁵ By contrast, 22 of the other routes under consideration have more parks/recreational areas within 1,000 feet of the right-of-way centerline than the Agreed Route.

Therefore, the Agreed Route respects the integrity of parks/recreational areas within the study area.

I. Historical and Aesthetic Values

⁶⁸ Joint Applicants' Ex. 22.

⁶⁹ Joint Applicants' Ex. 22.

⁷⁰ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁷¹ Joint Applicants' Ex. 22.

⁷² Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁷³ Joint Applicants' Ex. 22.

⁷⁴ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁷⁵ Joint Applicants' Ex. 22.

1. Historical Values

The Agreed Route respects the historical integrity of the study area. The Agreed Route crosses fewer recorded cultural resource sites than 28 of the 43 routes under consideration in this proceeding.⁷⁶ Only seven routes cross fewer recorded cultural resource sites than the Agreed Route.⁷⁷ Additionally, the Agreed Route performs better than 32 of the routes under consideration in this proceeding with regard to the number of additional recorded cultural resource sites within 1,000 feet of the centerline.⁷⁸

The Agreed Route crosses *zero* National Register listed sites.⁷⁹ It thus outperforms all of the originally filed 32 routes, as well as all but three of the supplemental "S" routes.⁸⁰ Additionally, the Agreed Route has *zero* additional National Register listed sites within 1,000 feet of the right-of-way centerline.⁸¹ The Agreed Route outperforms 20 proposed routes in this proceeding in this regard.⁸²

Finally, the Agreed Route only has 38.9 miles of right-of-way along areas of high archeological site potential.⁸³ It vastly outperforms the 32 originally filed routes in this regard, which tend to have over double the Agreed Route's length of right-of-way across areas of high archeological site potential.⁸⁴ It also outperforms the majority of the "S" routes and in total, outperforms 39 of the routes in this proceeding with regard to this criterion.⁸⁵ Therefore, the Agreed Route respects the historical integrity within the study area.

2. Aesthetic Values

The Agreed Route compares favorably to the other routes proposed in this proceeding with regard to aesthetic values. A proposed transmission line's aesthetic impact may be measured by its visibility from often traversed roads, such as highways and farm-to-market roads. The Agreed Route will only have 13.5 miles of right-of-way within the foreground visual

⁷⁶ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Joint Applicants' Ex. 22.

⁸⁰ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁸¹ Joint Applicants' Ex. 22.

⁸² Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁸³ Joint Applicants' Exhibit 22.

⁸⁴ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁸⁵ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

zone of US and State Highways.⁸⁶ This places it among the top third of the routes proposed in this proceeding.⁸⁷

The Agreed Route will only have 30.7 miles of right-of-way within the foreground visual zone of farm-to-market roads.⁸⁸ The Agreed Route thus outperforms all of the originally proposed 32 routes and several of the supplemental "S" routes.⁸⁹ Only six of the 43 routes to be considered in this proceeding have lengths of right-of-way with fewer miles within the foreground visual zone of farm-to-market roads.⁹⁰

The Agreed Route will only have 8.5 miles of right-of-way within the foreground visual zone of parks/recreational areas.⁹¹ The Agreed Route is within the top third of all 43 routes under consideration in this proceeding; only 12 routes will have less right-of-way within the foreground visual zone of parks/recreational areas. Therefore, the Agreed Route performs well compared to the other routes with regard to aesthetics.

V. Identification of Issues with Other Routes

The Agreed Route impacts a number of property interests represented by the Agreed Parties and represents a compromise of those interests with interests that would be impacted if a different route were approved in this case. The Agreed Route compares well with the other alternate routes as discussed in Section IV of this brief, *infra*. The routes advocated by the Joint Applicants and Commission Staff are problematic in the manner that they impact property interests without offering a demonstrably superior adherence to the routing factors of PURA and the Commission's rules.

A. All Initially Filed Routes Utilize the "Routing Circle"

All of the 32 alternate routes presented in the Application were designed to traverse through a small "routing circle" unilaterally identified by the Joint Applicants and described in the Testimony of Mark E. Caskey.⁹² This constraint of the routing options in this case is not

⁸⁶ Joint Applicants' Ex. 22.

⁸⁷ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁸⁸ Joint Applicants' Ex. 22.

⁸⁹ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁹⁰ Compare Joint Applicants' Ex. 22 and Direct Testimony of Tom Sweatman, McAllen Ex. 5 at Attachment B.

⁹¹ Joint Applicants' Ex. 22.

⁹² Direct Testimony of Mark E. Caskey at 21-27 and Exhibit MEC-2.

supported by the evidence as discussed in Section VI of this brief, *supra*. When the artificial constraint of the routing circle is eliminated, all routes that are designed to pass through it – including Route 32 supported by the Joint Applicants – are unnecessarily long and costly.

B. Route 1S Supported by Staff Requires Federal Approval

Although the Joint Applicants presented Route 1S as a viable route, the evidence suggests that construction of the route would be complicated by the fact that the route includes Link No. 287 which crosses property owned by the United States Fish and Wildlife Service.⁹³ Because the United States is not subject to the jurisdiction of the Commission's CCN authority, that link could only be constructed if Fish and Wildlife consents to the construction of Link 287, which crosses its land for approximately 1.6 miles.⁹⁴ Acquiring consent from Fish and Wildlife could take an unknown amount of time and result in delays with construction of the project and, as Staff's witness acknowledged, if consent was not given the route could not be constructed and the case would have to be re-filed.⁹⁵ In the past, when a transmission provider has failed to obtain the consent of a federal agency to cross its land the Commission has required that the entire route be re-filed rather than just a portion of the route needed to avoid crossing the federal land.⁹⁶ It is therefore greatly preferable in CCN cases for the approved route to cross no federal land where the Joint Applicants have not yet obtained consent to do so. Accordingly, Route 1S and any route including Link No. 287 should not be approved.⁹⁷

C. Route 1S is not Supported by Landowner Intervenor

In addition to the issues regarding the problematic crossing of federal lands, Route 1S does not address the concerns of the intervenors who have filed testimony in this case and has not been demonstrated to adequately address community values as required by PURA § 37.056(a). Staff's witness indicated that only community values as expressed in questionnaires filed out at open houses conducted by the Joint Applicants were considered in his

⁹³ Tr. at 184.

⁹⁴ Tr. at 191.

⁹⁵ Tr. at 222.

⁹⁶ *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, Order (Jan 21, 2011).

⁹⁷ Notably, in prior CCN cases Commission Staff has recommended that routes that cross federally owned land should only be approved if proof of consent is shown. See *Application of Lone Star Transmission, LLC for a Certificate of Convenience and Necessity for the Central A to Central C to Sam Switch/Navarro Proposed CREZ Transmission Line*, Docket No. 38230 at 14 (Aug 26, 2010).

recommendation of Route 1S.⁹⁸ There is no indication in the pre-filed direct testimony of Staff's witness Mr. Lee that any consideration was given to the contents of the direct testimony filed by the landowner intervenors of this case. In fact, Mr. Lee could not identify the number of intervenors impacted by the Links that comprise Route 1S.⁹⁹ Although Route 1S may have advantages with respect to the Agreed Route in certain limited respects – it is moderately shorter with a lower estimated cost for example – there is no evidence that Staff's recommendation of that route was based on a comprehensive and holistic review of all the evidence presented in this case, including intervenor testimony and that the recommendation was based on an overall balancing of the many routing factors of PURA § 35.056 and P.U.C. SUBST. R. 25.101. Rather, as acknowledged by Mr. Lee at the hearing, Staff's recommendation was primarily concerned with which route scored best on the factors of estimated cost and the number of habitable structures within 500-ft of the ROW centerline.¹⁰⁰ While these are certainly important factors to be considered, they are not the only factors to be considered, and the expression of community values in the Agreed Parties' support for the Agreed Route must be considered as a vitally important factor as well, particularly when many of those intervenors will be accepting a large and essentially permanent piece of infrastructure on their property as a consequence.

D. Route 32 Poses Engineering Constraints, Will Increase Cost and Potentially Delay the Project, and Adversely Impacts Areas in Which Development Groundwork Has Been Established

1. McAllen-Miller International Airport

Route 32 utilizes Link 118a, which will pose engineering constraints, increase costs, and delay construction of this project due to the link's proximity to McAllen-Miller International Airport ("MFE"). MFE's airspace has Federal Aviation Administration ("FAA") approval—this airspace includes the extension of the existing main runway and the construction of a new runway.¹⁰¹ Even though the runway expansions have not yet been built, they are included in the FAA "protected" airspace.¹⁰² The City of McAllen ("McAllen") presented the direct testimony of Bruce Beard, who worked at the FAA from 1974 to 2013. While now retired, Mr. Beard's

⁹⁸ Direct Testimony of Michael J. Lee at 17; Tr. at 204-205.

⁹⁹ Tr. at 206.

¹⁰⁰ Tr. at 213-214.

¹⁰¹ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 6.

¹⁰² Direct Testimony of Bruce Beard, McAllen Ex. 1 at 5.

duties included determining whether proposed obstacles (such as transmission line towers) were too tall for applicable airspace.¹⁰³ Mr. Beard testified that based on his three decades' worth of experience at the FAA, the FAA will likely not grant a favorable determination for Link 118a's construction using average-sized towers.¹⁰⁴ In fact, Mr. Beard determined that for some portions of Link 118a, the towers will need to be reduced by 50 feet, from 145 feet, to a maximum height of only 95 feet.¹⁰⁵ Mr. Beard's testimony is undisputed—in fact, Joint Applicants' witness Thomas opined that he does “not have the experience to question Mr. Beard's findings.”¹⁰⁶

It is also undisputed that notification to the FAA of construction along Link 118a will be necessary. It is doubtful whether the Joint Applicants will be able to comply with FAA requirements for the line. Joint Applicants admitted that they cannot construct 95-foot tall towers in some of the necessary areas due to other constraints.¹⁰⁷ The result will inevitably be construction and energization delay and increased costs. Engineering expert (and former Chief Engineer at the PUC) Tom Sweatman testified that “[t]he FAA will likely require either a reduction in tower height, line relocation, or some other action. If this happens, it is likely to cause changes in design, added costs and delays in construction and initial operation of this line which has been determined to be critical.”¹⁰⁸ Route 32 will be located too close to the McAllen-Miller International Airport. Construction of Route 32 will require notification to the FAA and immeasurably long delays and increased costs due to FAA height restriction requirements that Joint Applicants may not be able to overcome. For this reason alone, Route 32 should be rejected.

2. Bell Tract in the City of Peñitas

Route 32 includes a number of Links that will significantly disrupt development for which infrastructure is already in place. In particular, right of way for Links 56, 60, and 344 would occupy space already planned for construction of single- and multi-family housing as well as retail commercial construction for which wastewater infrastructure has been completed.¹⁰⁹ A 710-acre Tract known as the Bell Tract in Hidalgo County, which represents a major portion of

¹⁰³ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 3.

¹⁰⁴ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 12.

¹⁰⁵ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 9 and Attachment D.

¹⁰⁶ Tr. at 142 (Dec. 4, 2013).

¹⁰⁷ Rebuttal Testimony of Barrett Thomas, Joint Applicants' Ex. 10 at 7.

¹⁰⁸ Direct Testimony of Tom Sweatman, McAllen Ex. 5 at 10.

¹⁰⁹ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 4-5.

the City of Peñitas, is poised for development as the culmination of a Planned Unit Development approved by the city.¹¹⁰ Existing retail-commercial infrastructure, including a Walmart Supercenter, is already in operation on the Bell Tract.¹¹¹ The Bell Tract is encompassed by a Tax Increment Reinvestment Zone created by the city and Hidalgo County to facilitate funding of the waste-water infrastructure and badly needed housing in the area.¹¹² The waste-water system, which came on line this year, has capacity for 7500 connections to serve the Bell Tract.¹¹³ The Bell family has advanced funding to support the public infrastructure for the Bell Tract and has donated land to the city of Peñitas for city administrative and park facilities.¹¹⁴ Development groundwork for the Bell Tract would be significantly undercut by the location of the Links 56, 60, and 344, which would eliminate space for over 130 residential and multifamily structures.¹¹⁵ Link 60, rather than following the property boundary, would cut through the center of the key retail commercial parcel fronting on U.S. 83, negating the approved location for a shopping center.¹¹⁶ The effect of these links would also be to jeopardize the integrity of the Tax Increment Reinvestment Zone by diminishing the magnitude of property taxes that are committed to service the financing for the Zone.¹¹⁷ In short, Route 32 (and other western routes including these three links) would have a significant adverse impact on growth opportunities for the City of Peñitas that have been carefully planned for the last decade and more, and should be rejected as incompatible with community values.

VI. Utilization of the "Routing Circle" is Not Supported by the Record Evidence¹¹⁸

Proposed routes for the Cross Valley Project transmission line that utilize the "routing circle" unilaterally designated by the Joint Applicants impact far more land owners than routes that proceed in a forward progressing manner from the North Edinburg substation to the Loma

¹¹⁰ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 11.

¹¹¹ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 7-8.

¹¹² Direct Testimony of John Womack, Mil Encinos Ex. 2 at 9.

¹¹³ Direct Testimony of Oscar Cuellar, Mil Encinos Ex. 3 at 8.

¹¹⁴ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 12.

¹¹⁵ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 22.

¹¹⁶ Direct Testimony of Oscar Cuellar, Mil Encinos Ex. 3 at 7.

¹¹⁷ Direct Testimony of John Womack, Mil Encinos Ex. 2 at 21.

¹¹⁸ This section addresses the issues that have been raised in testimony, particularly the Joint Applicants' rebuttal testimony, regarding the necessity to route through the "routing circle" in proximity to the South McAllen substation for electric reliability planning purposes. Usually, this section would be reserved for a reply brief in the event that the Joint Advocates' initial briefing continues to advocate use of the "routing circle." However, the ALJ has requested that all substantive arguments be made in initial briefs rather than in reply briefs and this section is included to accommodate that request.

Alta substation. These routes, which include every route filed in the initial Application and Route 32 identified as the best route by the Joint Applicants, are longer and more expensive than direct North Edinburg to Loma Alta routes such as routes 1S – 10S submitted in the Supplement to the Application. A third of the routes proposed by the Joint Applicants that pass through the “routing circle” do so by making a loop in the area south of the City of McAllen with segments of the line that are very narrowly separated and doubly impact a number of landowners.¹¹⁹ The extra cost, length, and landowner impact of routes that utilize the “routing circle” is unnecessary because, as demonstrated by the evidence in this case, the “routing circle” is used to facilitate a *future connection* at the South McAllen substation, does not result in an actual future connection to that substation as studied by ERCOT, and is unnecessary even if a future connection of the Cross Valley Project transmission line is someday needed because, by the Joint Applicants’ own testimony, that connection can be accomplished using 138-kV lines that connect South McAllen to a new substation on the North Edinburg to Loma Alta line.

A. The “Routing Circle” Has Already Been Extensively Examined in this Case

All of the routes identified by the Joint Applicants in the Application filed on July 5, 2013 were designed to traverse through a “routing circle” identified in the direct testimony of Mark E. Caskey.¹²⁰ This limitation was the primary subject of the Route Adequacy Hearing conducted in this case on October 8, 2013. In Order No. 6 the ALJ required the Joint Applicants to file additional routes using noticed links that did not utilize the routing circle, correctly concluding that their self-imposed requirement to constrain all routes through the circle was not supported by the evidence.¹²¹

B. The ERCOT Recommendation of Routing in Proximity to South McAllen is Vague and Based on Future, Low-Likelihood Reliability Issues

The “routing circle” was created by the Joint Applicants in response to their interpretation of ERCOT’s endorsement of the Cross Valley Transmission project.¹²² The ERCOT Board did endorse the Cross Valley Project with it being routed “in proximity” to the

¹¹⁹ See Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 1. See also Fortco, Inc., Exhibit 1, Rio Fresh Exhibit 1, and Frank Schuster Farms Exhibit 1.

¹²⁰ Direct Testimony of Mark E. Caskey at 24 and Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 2.

¹²¹ Order No. 6 at 19.

¹²² Transcript of Preliminary Hearing on Route Adequacy at 11.

South McAllen substation but, critically, the term “proximity” was never defined in the ERCOT process.¹²³ Further, upon examination of the ERCOT process that was conducted in the course of making its recommendation, there is no evidence that the proposed Cross Valley Project transmission lines presented to the ERCOT Regional Planning Group (RPG) included any option that was routed in the proximity of the South McAllen substation.¹²⁴ RPG does not take votes to approve projects but rather works on consensus.¹²⁵ Consensus was never reached on the Cross Valley Project at RPG, primarily because of the inclusion of a hypothetical 250 MW load at the Brownsville port that was a key component of the demonstration of need for the transmission line.¹²⁶ After RPG failed to reach consensus regarding the project, however, it was still presented to the ERCOT Technical Advisory Committee (TAC).¹²⁷ TAC did vote to recommend the line, and the *only* proposed configurations presented to TAC were routed in the vicinity of the South McAllen Substation.¹²⁸ The ERCOT Board was given a presentation similar to that made at TAC and voted to recommend the project with very little deliberation.¹²⁹ The minutes of the presentation to TAC and the ERCOT Board indicate that there was *no discussion* of the proximity issue during either presentation.¹³⁰

Consideration of the procedural details of the ERCOT process is necessary in this case because the Joint Applicants’ advocacy of routes that utilize their self-designated “routing circle”, including Route 32, is justified *solely* on the basis that ERCOT’s recommendation of the project included the recommendation that the North Edinburg to Loma Alta transmission line be routed in the “vicinity” of the South McAllen substation.¹³¹ No other reason has been articulated to justify the detour in the line that adds miles to its length at a cost of approximately \$50 million more than the supplemental routes that do not make the detour and impacts hundreds of additional landowners, many dozen of who are active intervenors in this case. Further, the Joint Applicants have wielded the “critical to reliability” designation attached to the Cross Valley

¹²³ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 - Deposition of Jeff Billo at 67.

¹²⁴ Joint Landowners’ Exhibit No. 7. See also Transcript of Preliminary Hearing on Route Adequacy at 86.

¹²⁵ Transcript of Preliminary Hearing on Route Adequacy at 116.

¹²⁶ *Id.* at 117, 119-120, and 122.

¹²⁷ *Id.* at 117-119.

¹²⁸ *Id.* See also Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 - Exhibit 5 to the Deposition of Jeff Billo.

¹²⁹ Joint Landowners’ Exhibit No. 6 at 4. Transcript of Preliminary Hearing on Route Adequacy at 125.

¹³⁰ Joint Landowners’ Exhibit No. 6 at 4 and 6. See also Transcript of Preliminary Hearing on Route Adequacy at 87-88, 125-126.

¹³¹ Transcript of Preliminary Hearing on Route Adequacy at 11.

Project through the ERCOT process to move this case at an accelerated pace and to justify the use of the “routing circle” as also critical to reliability and thus unassailable.¹³² This tactic was rejected by the ALJ in the Order on Route Adequacy.¹³³

The ERCOT process for reviewing transmission line projects begins with the submission of a proposal to RPG by the party seeking to build it.¹³⁴ Following a comment period, ERCOT begins its review.¹³⁵ Although RPG works on consensus of its members, which includes every Transmission Service Provider (TSP) in ERCOT, consensus is not required for ERCOT Staff to make a recommendation of a project proposed at RPG to TAC.¹³⁶ TAC considers materials presented by ERCOT Staff and may discuss issues regarding a project but does not conduct its own evaluation of a project.¹³⁷ It is *not* TAC’s function to analyze transmission projects; rather, TAC reviews the projects as presented to it by ERCOT Staff.¹³⁸ The same is true of the ERCOT Board, which votes to make a final recommendation of a transmission project based on the recommendation of TAC and information presented by ERCOT Staff.¹³⁹ Thus it is misleading to state that the Cross Valley Project was analyzed “at every level” of the ERCOT process. The *only* analysis was conducted by ERCOT Staff during the RPG process and the evidence in this case demonstrates that the addition of the “proximity to South McAllen” recommendation was developed late in the process – subsequent to the November 11, 2011 presentation of ERCOT Staff’s analysis to RPG and before the January 5, 2012 presentation to TAC.¹⁴⁰

In the presentation to RPG made on November 11, 2011, ERCOT Staff stated that additional contingencies would be studied to make a final recommendation for the Cross Valley Project including N-1 + G-1 contingencies with and without the hypothetical 250 MW load in Brownsville. An N-1 + G-1 contingency represents the loss of a transmission element and a

¹³² Objection to and Motion to Strike the Route Adequacy Testimony of T. Brian Almon, James R. Dauphinais, and Rudolph K. “Rudi” Reinecke and Request for Expedited Action at 1.

¹³³ Order No. 6 at 16. (“However, there was persuasive evidence that the connection from the North Edinburgh substation to the South McAllen substation is not critical to addressing short-term Valley constraints.”).

¹³⁴ Transcript of Preliminary Hearing on Route Adequacy at 174; ERCOT Planning Guide § 3.1.5; ERCOT Protocols § 3.11.4.1; *see also* Joint Applicants’ Post-Hearing Brief on Route Adequacy at 2-3.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Transcript of Preliminary Hearing on Route Adequacy at 73, 189.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 - Deposition of Jeff Billo Exhibits 5 and 6.

generation unit simultaneously.¹⁴¹ This is a more specific and less likely scenario than the N-1-1 contingency that was considered in the RPG presentation presenting a transmission line that was not routed in the vicinity of South McAllen.¹⁴² An N-1-1 contingency represents the simultaneous loss of two transmission elements. It was on the basis of this N-1 + G-1 analysis that the South McAllen proximity recommendation was added to the Cross Valley Project as described in the ERCOT Independent Review eventually attached to the Board's recommendation of the project.¹⁴³ Importantly, the N-1 + G-1 analysis only demonstrated a need for a future 345-kV connection in the 2020 timeframe.¹⁴⁴ The N-1-1 contingencies identified in the Brownsville area in the 2016 timeframe are resolved by a 345-kV transmission line connecting North Edinburg to Loma Alta substations without being routed in proximity of the South McAllen substation.¹⁴⁵

Finally, although the ERCOT recommendation was based on a 345-kV connection to South McAllen substation being needed in the future, ERCOT also identified upgrades to existing 138-kV lines as an alternate solution to future reliability issues in the western LRGV region.¹⁴⁶ These upgrades could be completed on a timeline similar to that of the construction of the North Edinburg to Loma Alta 345-kV transmission line.¹⁴⁷

C. The "Routing Circle" is an Arbitrary and Unsubstantiated Interpretation of "Proximity to South McAllen Substation"

Even accepting, *arguendo*, the basis for ERCOT's recommendation that the North Edinburg to Loma Alta transmission line be routed in proximity to the South McAllen substation, the "routing circle" represents an unnecessarily constrained interpretation of that recommendation. As previously stated, ERCOT did not define the term "proximity" at any stage of its analysis.¹⁴⁸ The Joint Applicants claim that they used a process to determine the definition

¹⁴¹ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 3 at 19.

¹⁴² See Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 - Deposition of Jeff Billo at 28 and Exhibit 2.

¹⁴³ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 3 at 19.

¹⁴⁴ *Id.*

¹⁴⁵ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 -Deposition of Jeff Billo at 32. See also Joint Landowners' Exhibit No. 10 at Question Nos. Fortco 1-21 and 1-22.

¹⁴⁶ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 3 at 20.

¹⁴⁷ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 6 Transcript of Preliminary Hearing on Route Adequacy at 20.

¹⁴⁸ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7, Deposition of Jeff Billo at 67.

of “proximity” that was methodical and reasonable, resulting in a “routing circle”.¹⁴⁹ However, no methodology or definition of determining “proximity” was included in the Application, its supporting testimony, in responses to Requests for Information, or at the Route Adequacy Preliminary Hearing or the Hearing on the Merits. In fact, the “routing circle” was drawn *after* the proposed links had been developed to encompass routes that had previously been drawn, not to establish an actual proximity to the South McAllen station based on electrical considerations.¹⁵⁰ Although the circle is presented as an attempt to comply with ERCOT’s recommendation, ERCOT was not consulted about the viability of the “routing circle” and, as discussed in the following section, routing within the circle does not accomplish the South McAllen future connection that ERCOT actually modeled in its N-1 + G-1 analysis.¹⁵¹

D. The Application Did Not Propose to Connect the North Edinburg to Loma Alta Transmission Line to the South McAllen Substation in the Future

In its Independent Review of the Cross Valley Project, ERCOT studied the effects of a future 345-kV connection between the North Edinburg and South McAllen substations to alleviate N-1 + G-1 contingencies in the 2020 timeframe.¹⁵² This analysis included power flow studies that analyzed a 345-kV connection at South McAllen and not any other type of connection to the transmission lines in that area.¹⁵³ Despite this fact, the Joint Applicants did not propose a routing of the North Edinburg to Loma Alta transmission line that would facilitate a future connection at South McAllen; rather, the Joint Applicants proposed a line that would connect to a *new* substation in the South McAllen area that would then be connected to the South McAllen substation via two or more 138-kV transmission lines.¹⁵⁴ Because the connection would be made to the North Edinburg to Loma Alta 345-kV line, the length of the connection would be up to 3 miles distance if the new substation were located within the Joint Applicants’ proposed “routing circle.”¹⁵⁵ The transmission topology of the 345-kV connection as studied by

¹⁴⁹ Direct Testimony of Mark E. Caskey at 24 and Joint Landowners’ Exhibit No. 3.

¹⁵⁰ Transcript of Preliminary Hearing on Route Adequacy at 139, 164-65. *See also* Response to Fortco RFI No. 2-6.

¹⁵¹ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7, Deposition of Jeff Billo at 69; Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 5 at Question No. Fortco 1-32.

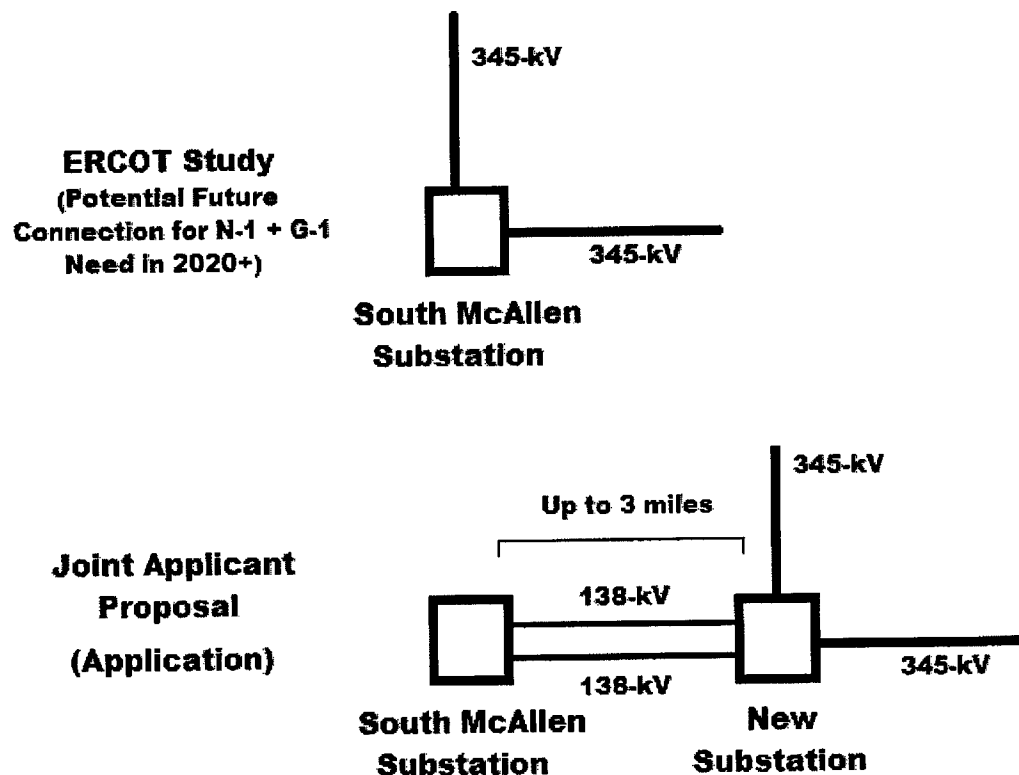
¹⁵² Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 3 at 20.

¹⁵³ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 at 45.

¹⁵⁴ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 6 at 136-137.

¹⁵⁵ *Id.* at 137-138.

ERCOT and as the Joint Applicants proposed in the Application is represented in the figure below:



Although the Application and Direct Testimony of Mark Caskey states that it is not possible to connect a 345-kV line to the South McAllen substation as recommended by ERCOT,¹⁵⁶ Mr. Caskey testified at the Route Adequacy Hearing that it *would* be possible to do so by simply expanding the size of that substation to allow for a 138/345-kV autotransformer.¹⁵⁷ Thus it is not clear why the Joint Applicant's proposed this alternate connection, particularly given the fact that ERCOT did not study it and would have to perform some analysis to determine if this type of connection would satisfy their recommendation for resolving N-1 + G-1 contingency issues in the 2020 timeframe.¹⁵⁸ Further, the Joint Applicants have not presented any evidence on how they would connect the 345-kV line to the 138-kV lines in the South

¹⁵⁶ Direct Testimony of Mark E. Caskey at 24. See also Joint Landowners' Exhibit No. 10 at Question No. Fortco 1-27.

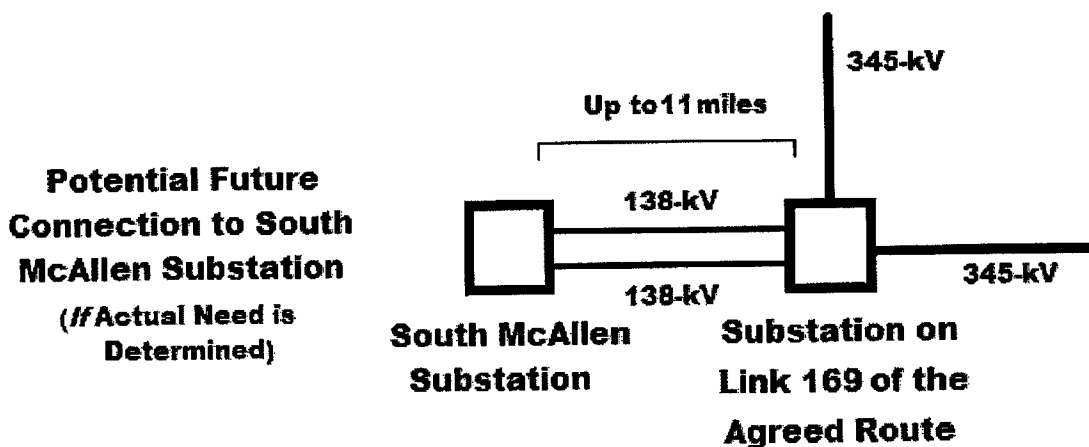
¹⁵⁷ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 6 at 150, 152-53.

¹⁵⁸ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 at 46.

McAllen area in the future. Testimony by Joint Applicant witness Mark Caskey establishes that they are uncertain as to how many lines would be connected and whether this would accomplish the reliability objectives of the ERCOT Independent Review.¹⁵⁹ Although Mr. Caskey's Route Adequacy Testimony states that any 138-kV lines connecting to a new substation could not be longer than 2-3 miles, the Joint Applicants did not perform any analysis to justify that testimony.¹⁶⁰

E. The Agreed Route Facilitates a Future Connection to the South McAllen Substation if a Connection is Needed in Future

Approval of the Agreed Route will not prevent a future connection to the South McAllen substation if such a connection is needed. In fact, the only difference between a connection to a new substation on the Agreed Route by two 138-kV transmission lines and the South McAllen substation and the Joint Applicant's proposal of all 32 of their initially filed routes is the length of the 138-kV transmission lines. This is demonstrated on the figure below:



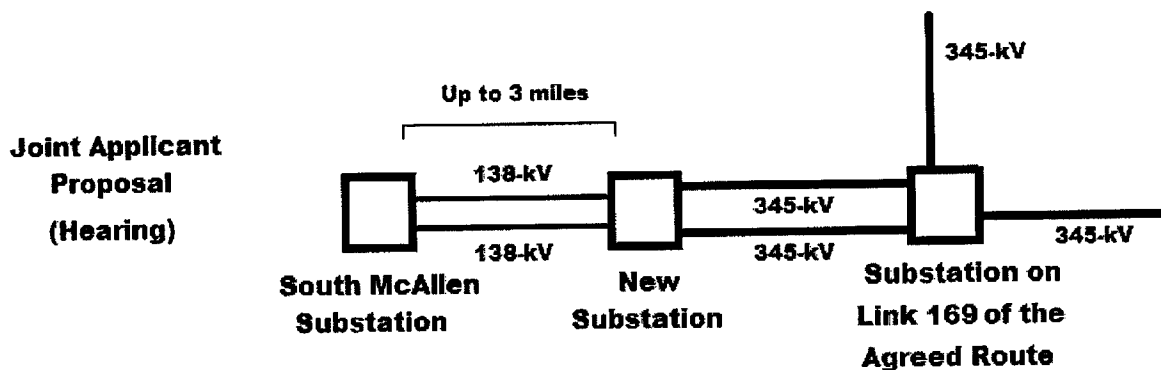
The Joint Applicants asserted in testimony that "impedance issues" would prevent the connecting 138-kV line from being more than 3 miles in length, but they performed no analysis to support that assertion and had not done so as of the Hearing on the Merits.¹⁶¹ In rebuttal testimony, Joint Applicant witness Mark E. Caskey testified that if a future 345-kV connection

¹⁵⁹ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 6 at 136-138.

¹⁶⁰ *Id.* at 147-48.

¹⁶¹ Tr. at 135-136.

were needed to the South McAllen substation, a 345-kV “loop” of two lines between Link 169 of an approved line that did not traverse within 3 miles of South McAllen would be needed at a cost of approximately \$50 million.¹⁶² In that rebuttal testimony, and confirmed at the Hearing on the Merits, the witness testified that this would not change the proposed configuration of the connection that the Joint Applicants proposed in the Application – a connection using 138-kV lines rather than a direct 345-kV connection as studied by ERCOT.¹⁶³ This is demonstrated in the figure below:



This configuration is unnecessarily convoluted and expensive and, frankly, seems calculated to “intimidate” the ALJ and Commission into approving Route 32 rather than the Agreed Route by threatening the need for intrusive and costly transmission infrastructure in the future. Many 138-kV lines in operation in ERCOT today are considerably longer than 3 miles in length, as acknowledged by Mr. Caskey at the Route Adequacy Hearing,¹⁶⁴ including many in the study area of this case, and these lines serve their function of delivering electricity. There is no evidence in this case that 138-kV lines 11 miles in length could not serve the purpose of connecting the Cross Valley Project transmission line to the South McAllen substation in future just as suitably as such lines 3 miles in length. Further, Mr. Caskey acknowledged that the impedance issues for transmission lines will vary by their conductors and other equipment and that the effects of impedance can be mitigated by such equipment.¹⁶⁵ The absence of *any* evidence regarding transmission line impedance or other issues requiring the connecting 138-kV

¹⁶² Rebuttal Testimony of Mark E. Caskey at 7.

¹⁶³ *Id.* at 4 -7 and Tr. at 134-136, 140-141.

¹⁶⁴ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 6 at 146.

¹⁶⁵ *Id.* at 149.

lines to be no longer than 3 miles in length is telling. There is absolutely no evidence in the record to suggest that a connection using 138-kV lines to connect South McAllen substation to the Agreed Route if such a connection is needed in future could not be accomplished in a manner almost identical to that proposed in the Application. There is no evidence that future costly 345-kV lines will be needed for such a connection and the assertions otherwise in the Joint Applicants' rebuttal testimony should be disregarded.¹⁶⁶

F. No Evidence Has Been Presented Subsequent to the Route Adequacy Hearing to Justify Utilization of the "Routing Circle"

As noted in Section VI-A of this brief, *infra*, the need to route through the Joint Applicants' "routing circle" was the focus of the October 8, 2013 Route Adequacy Hearing which was predicated by expert testimony filed by the Joint Applicants and a group of Joint Landowners opposed to the unnecessary constraint of the circle. The hearing was followed by briefing by the same parties as well as Commission Staff and other intervenors in the case and resulted in the Order No. 6 which included a lengthy discussion of the "routing circle" and ultimately determined that the evidence did not support its use as a mandatory routing constraint.¹⁶⁷ The Joint Applicants were thus well aware as they prepared rebuttal testimony and for the Hearing on the Merits that their position advocating that any North Edinburg to Loma Alta transmission line route must be placed through the "routing circle" had been rejected by the Joint Landowners and other intervenors, Commission Staff,¹⁶⁸ and the ALJ.¹⁶⁹ Were the Joint Applicants to continue to advocate for routing through the circle – as they did in rebuttal testimony – it stood to reason that a robust and thorough presentation of additional or expanded evidence in support of that position would be forthcoming in that testimony and at hearing.

No such evidence was presented. Although the reasoning for routing through the circle was restated in the Joint Applicants' rebuttal testimony,¹⁷⁰ no additional analysis was performed regarding the line impedance issues cited as the reason for placing a new substation within 3 miles of the South McAllen substation and no evidence was presented to establish why a 138-kV connection of that substation to the Approved Route would be any less effective at 11 miles than

¹⁶⁶ Rebuttal Testimony of Mark E. Caskey at 3-8.

¹⁶⁷ Order No. 6 at 19.

¹⁶⁸ Commission Staff's Brief on Route Adequacy at 4-5.

¹⁶⁹ See Order No. 6.

¹⁷⁰ Rebuttal Testimony of Mark E. Caskey at 3-8.

at 3.¹⁷¹ The rebuttal testimony of Mr. Caskey did include a reference to the 2013 Regional Transmission Plan Update presented to RPG on October 22, 2013 and prepared by Mr. Billo.¹⁷² A single line of one table in that presentation cryptically refers to a “Cross Valley Project tap a South McAllen” as an N-1 Project with “x” market for 2016 and 2018 but with no further explanation or description of any analysis.¹⁷³ This is notable, because it not only differs from the ERCOT Independent Review of the Cross Valley Project in the timeframe for which a connection at South McAllen may be needed but it changes the contingency that it would resolve from N-1 + G-1 (simultaneous loss of a transmission element and a generation unit) to N-1 (loss of a transmission element only). If substantive analysis supporting this change were presented in the record it would seem to provide at least some additional support for the Joint Applicants’ desire to route “in proximity” to South McAllen substation,¹⁷⁴ though it would do nothing to support their insistence that a 3-mile 138-kV connection to a substation on the Cross Valley Project line complies with the ERCOT model whereas an 11-mile connection does not. No such information is presented in the record, however, as acknowledged by the Joint Applicants’ witness at hearing.¹⁷⁵

The Regional Transmission Plan Update attached to Mr. Caskey’s rebuttal testimony is, as he acknowledged, a preliminary document subject to change before finalization.¹⁷⁶ Further, the document has inherent limitations. The Regional Transmission Plan does not approve or recommend any project; each and every transmission project – including a connection at South McAllen substation – would have to be proposed and taken through the ERCOT process in accordance with the Regional Planning Protocols.¹⁷⁷ Further, the load projection data that ERCOT is using for the Regional Transmission Plan is currently undergoing a thorough review and revision at ERCOT due primarily to its reliance on Moody’s economic growth forecasts that

¹⁷¹ *Id.* and Tr. at 134-135.

¹⁷² Rebuttal Testimony of Mark E. Caskey at 6 and Attachment MEC-RT-1.

¹⁷³ Rebuttal Testimony of Mark E. Caskey at 34 - Attachment MEC-RT-1.

¹⁷⁴ The value of this information is unclear because of its lack of supporting analysis and is confused by the information on page 3 of Exhibit MEC-RT-2 which states that 2020 case was used and that “preliminary results show need for this connection by 2018.” It is not clear if an updated case was used or how this correlates to the 2016 column in the table of Exhibit MEC-RT-1 being checked for the Cross Valley Project. Without the ability to perform additional analysis or pose questions to ERCOT regarding this information it is at best a “black box” result.

¹⁷⁵ Tr. at 138.

¹⁷⁶ Rebuttal Testimony of Mark E. Caskey at 6.

¹⁷⁷ Tr. at 139-140 and Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 8.

have been proved repeatedly unreliable because they over-forecast growth.¹⁷⁸ This same over-forecasting has resulted in ERCOT's Capacity, Demand and Reserves (CDR) reports being persistently inaccurate when forecasting load and available reserves 3 or more years in the future¹⁷⁹ and has been an issue of considerable controversy and debate in the Commission's ongoing resource adequacy discussions.¹⁸⁰

In summary, the consideration of whether a connection will be required at the South McAllen substation and what facilities will be necessary to make such a connection is purely speculative until ERCOT performs specific studies in that regard. This was acknowledged by the Joint Applicants' witness Mr. Caskey at the Hearing on the Merits.¹⁸¹ Rather than impact hundreds of additional landowners with costly transmission infrastructure based on this speculation that is not supported by any evidence in the record, this case should focus solely on the best route for the North Edinburg to Loma Alta transmission line that is the *only* transmission project that has been designated by ERCOT as critical to reliability.¹⁸² For the reasons presented in this brief, based on the record evidence, the Agreed Route is the route that best complies with the routing criteria in PURA and the Commission's rules and should be approved by the ALJ and the Commission.

VII. Conclusion and Prayer

WHEREFORE, PREMISES CONSIDERED, the Agreed Parties respectfully request that the Administrative Law Judge recommend that the Application to amend the Joint Applicants' Certificate of Convenience and Necessity to construct a new 345-kV transmission line from the North Edinburg substation to the Loma Alta substation be approved only on the Agreed Route as that route best represents the community values of the study area and best complies with the routing factors of PURA and the Commission's rules as demonstrated by the totality of the record evidence. The Agreed Parties further request any relief to which they are entitled.

¹⁷⁸ Tr. at 127-128.

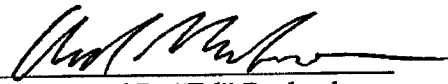
¹⁷⁹ Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 4.

¹⁸⁰ See, for example, Memorandum in Project 40160, Proceeding to Examine the Inputs Included in the ERCOT Capacity, Demand, and Reserves Report (Jan 3, 2013).

¹⁸¹ Tr. at 140-141.

¹⁸² Madeira Properties Ltd., Fortco Properties, Cardenas Realty Co., Inc., et. al. Exhibit No. 7 at 78-79.

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On Behalf of Francis L. Phillipp; Rita Soto; La Cuesta Sol Development, LLC; Tom Moses; TVC Donna Groves, LLC; ADS Donna Groves, LLC; Mike Rhodes; ML Rhodes, Ltd.; Rhodes Enterprises; Paramount Citrus II, LLC; Paramount Citrus Packing Company; G and M Real Estate Co.; Durango Development, Inc.; Anthony Gray; Jimmie and Barbara Steidinger; Kevin Campbell and Tae Sun Lee.

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Luis Cardenas

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On Behalf of Stag Holdings, Ltd.; EIA Properties, Ltd.;
Frost Bank and Ben Vaughan, II, Co-Trustees of the
Genevieve T. Dougherty Trust #2; Frost Bank as Trustee of
the Melissa Dougherty; Wells Fargo Bank, N.A. as Trustee
of the Kevin Dougherty Trust; Verde Mission, L.P. and
Verde 5801 George McVay, LP.

By: /s/ ANDREA STOVER W/ PERMISSION AM

Andrea Stover

GRAVES, DOUGHERTY, HEARON & MOODY

On Behalf of d'Hemecourt Properties, Inc., and City of
Hidalgo

By: ATTACHED

Carrie Collier-Brown
WINSTEAD PC

On Behalf of City of San Juan

By: /s/ Kirk Rasmussen W/ PERMISSION AM
Kirk Rasmussen
ENOCH KEVER PLLC

On Behalf of Ledesma, Barrerra & Smith LLC

By: _____
Javier Ledesma, President

On Behalf of City of McAllen; JLP Investments Trust; San Juan Management, LLC; San Juan Ventures, Ltd.; Los Arboles Ventures, Inc. and Eldora Heights, LLC

By: /s/ EILEEN MCPHEE w/permission AM

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On Behalf of Hidalgo County Regional Mobility Authority

By: /s/ KAY TROSTLE w/permission AM

J. Kay Trostle
SMITH TROSTLE & HUERTA LLP

On Behalf of Maquila Trades & Forwarding, LLC

By: /s/ ANTONIO VILLOA w/permission AM
Antonio Villeda
LAW OFFICE OF ANTONIO VILLODA

On Behalf of Dr. Homero and Sonia C. Rivas

By: /s/ MARCUS BARRERA w/permission AM

Marcus C. Barrera
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On Behalf of Rio Grande Bible Institute, Inc.

By: ATLHED
Thomas D. Koeneke
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On Behalf of Hidalgo County Irrigation District #6

By: /s/ RICARDO PUMAREJO w/RETURN AM
Ricardo Pumarejo, Jr.
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On Behalf of Valle de los Tesoros, Ltd. and Hidalgo
County Irrigation District No. One

By: Amado
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On Behalf of City of Pecos

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On Behalf of Advance Heights Developers; Francisco
Vazquez; Conquer LAND Utilities, LLC; Capstone Land
Holdings, Ltd.; Jesus and Diana Ruiz, et al.; Lucia Anaya,
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Anaya; Minera Anaya-St. John; Jose Guadalupe Villareal
and Jesus Lira

By: Amado
Eduardo Anaya
LAW OFFICE OF EDUARDO ANAYA

On Behalf of Hidalgo County Water Improvement District
No. 3

By: APRACHED
R.K. Whittington
LAW OFFICE OF RANDOLPH KIMBLE
WHITTINGTON

On Behalf of Propilusion Investments, LLC and Delia
Lubin

By: /s/ Richard Cantu w/ permission AM
Richard A. Cantu
ELIZABETH SANDOVAL CANTU

On behalf of City of Pharr; Pharr Economic Development
Corporation, Inc. and Pharr Tax Increment Reinvestment
Zone

By: /s/ MICHAEL PRUNEDA w/ permission AM
Michael Pruneda
THE PRUNEDA LAW FIRM, PLLC

On Behalf of Angel Herrera, Sr.

By: /s/ ANGEL HERRERA w/ permission AM
Angel Herrera, Jr.
ABEL LAW GROUP, LLP

On Behalf of United Irrigation District and Hidalgo County
Irrigation District No. 16

By: /s/ ROBERT RIMA w/ permission AM
Robert A. Rima

On Behalf of John Randall

By: /s/ LAMBETH TOWNSEND v/ KENNEDY AM
Lambeth Townsend
Melissa Long
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TOWNSEND, P.C.

On Behalf of Prince Sameer, LLC and B.G.S. Naraindas

By: APACHE
Patricia Hernandez
LAW OFFICE OF PATRICIA HERNANDEZ

On Behalf of South Texas Independent School District

By: APACHE
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WALSH, ANDERSON, GALLEGOS, GREEN &
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On Behalf of William J. Flowers; Vancouver Resources,
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On Behalf of Valley Race Park, LLC

By: /s/ KATHERINE COLEMAN 1/11/13 AM

Katherine L. Coleman
ANDREWS KURTH, LLP

On Behalf of Rebecca and Dale Klein

By: /s/ CHRIS REEDER 1/11/13 AM

Chris Reeder
Husch Blackwell, LLP

On Behalf of Mil Encinos Development, Ltd. and G.E. Bell
Properties, Ltd.

By: Attacked
Rene Ruiz
COX SMITH MATTHEWS, INC.

CERTIFICATE OF SERVICE

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

Velma Ellis