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

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BEFORE THE STATE OFFICE

OF

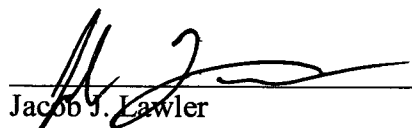
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S REPLY BRIEF

Respectfully Submitted,

Joseph P. Younger
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division



Jacob J. Lawler
Attorney - Legal Division
State Bar No. 24076502
(512) 936-7275
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Dated: January 8, 2014

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COMMISSION STAFF'S REPLY BRIEF

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

I. INTRODUCTION AND SUMMARY

In total, 16 initial briefs were filed by more than 130 parties. These 16 initial briefs focused on three routes: Route 32, Route 3S Modified (Agreed Route), and Route 1S.

Joint Applicants recommended approval of Route 32 in their initial brief.¹ However, they also stated that they would not oppose approval of Route 3S Modified (Agreed Route) given the advantages of a largely agreed-upon route.²

Most of the landowner intervenors who filed an initial brief are members of the Agreed Parties and thus supported approval of Route 3S Modified (Agreed Route). However, many of the Agreed Parties also filed initial briefs outlining their individual concerns with specific links or routes. Among the Agreed Parties who filed individual initial briefs, all but two – *i.e.*, EIA/Dougherty/Verde Parties and John Randall, Jr. – would likely not oppose Route 1S because that route does not use links to which they are opposed.

A discussion of each initial brief is included in Section IV (Route Selection) below.

¹ Joint Applicants' Initial Brief at Bates 4.

² *Id.* at Bates 4, 27.

II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

No reply.

III. ISSUES RELATING TO THE APPLICATION

No reply.

IV. ROUTE SELECTION

Every party who filed an initial brief in this proceeding expressed a preference concerning the route selected. Accordingly, each party's preference is discussed below. However, multiple parties expressed a similar concern regarding the use of Link 287 by Route 1S. Therefore, Staff will discuss Link 287 before addressing the parties' routing preferences.

Link 287 is approximately two miles in length running almost due east in Cameron County, Texas.³ In the initial briefs of the Agreed Parties, EIA/Dougherty/Verde Parties, and John Randall, Jr., Link 287 was criticized for crossing through the Lower Rio Grande National Wildlife Refuge (Wildlife Refuge).⁴ As these parties stated in their briefs, the Wildlife Refuge is federal land that would require approval from the United States Department of the Interior Fish and Wildlife Service (U.S. Fish and Wildlife) to cross. However, Staff does not believe that this requirement precludes the selection of Route 1S.

In arguing against crossing the Wildlife Refuge, the intervenors cite P.U.C. Docket Nos. 32871, 37616, and 38230.⁵ The first two CCN dockets listed are cases where Brazos Electric Power Cooperative, Inc. (Brazos) received Commission approval for a route that required crossing land owned by the U.S. Army Corps of Engineers. Ultimately, Brazos had to re-file its CCN application after failing to receive the needed approval. CCN Docket No. 38230 was a CREZ application by Lone Star Transmission, LLC (Lone Star) where Staff recommended a

³ Joint Applicants Ex. 20 (map).

⁴ Agreed Parties' Initial Brief at Bates 18-20, 27; Initial Post-hearing Brief of EIA/Dougherty/Verde Parties at 28; Initial Brief of John Randall, Jr. at 1, 3-4.

⁵ Initial Brief of John Randall, Jr. at 5-6; Agreed Parties' Initial Brief at 20, 27.

route that crossed U.S. Army Corps of Engineers' (Army Corps') land after the utility received approval to cross from the Army Corps.⁶

The above-referenced CCN dockets are easily distinguishable from the current proceeding. The most significant difference between the cited dockets and this proceeding is the federal agency involved. As the cited dockets aptly demonstrate, the Army Corps has rigorous requirements for utilities that wish to cross its land. U.S. Fish and Wildlife, however, has very different standards as evidenced by the testimony of ETT witness Rob Reid.⁷ Indeed, if the Joint Applicants did not believe that they would receive approval for Link 287 from U.S. Fish and Wildlife, they would not have proposed six routes that use Link 287.⁸ Joint Applicants' witness Rob Reid testified at the hearing on the merits: "Well, any time you cross government property, it can be problematic, and we have had extensive coordination and consultation with the U.S. Fish and Wildlife Services evidenced by the emails and letters in the Environmental Assessment document."⁹ Considering the extent of these communications occurring before filing the application, it is counterintuitive to assert that Joint Applicants would propose six routes using a non-viable link, one of which was a supplemental route filed as a result of the route adequacy hearing.

A. Joint Applicants' Initial Brief

Joint Applicants recommended Route 32 in their initial brief.¹⁰ This recommendation was based on three factors in particular.¹¹ First, Joint Applicants believe that Route 32 is the best long-term transmission planning solution to relieve congestion around South McAllen.¹² Second, Route 32 impacts the fewest number of habitable structures.¹³ Third, Joint Applicants

⁶ Another route was ultimately selected.

⁷ Tr. at 147-153 and 183-184

⁸ Routes that use Link 287 are Routes 3, 9, 14, 18, 29, and 1S.

⁹ Tr. at 184:3-7.

¹⁰ Joint Applicants' Initial Brief at Bates 4.

¹¹ *Id.* at Bates 12-14.

¹² *Id.* at Bates 12.

¹³ *Id.* at Bates 13.

claim that Route 32 is comparable in cost to Route 3S Modified (Agreed Route) and Route 1S after considering the potential cost-savings for future transmission projects.¹⁴

While Staff agrees with Joint Applicants that Route 32 would impact the fewest number of habitable structures, this is the only significant benefit associated with Route 32. Moreover, significant disadvantages weight against Route 32, such as its cost and length.

Staff disagrees that Route 32 is the best solution for the long-term transmission needs around South McAllen. As the hearing on route adequacy and SOAH Order No. 6 demonstrated, there is insufficient evidence to find that ERCOT's directive to route a transmission line "in proximity to" the South McAllen Substation requires routing through the Joint Applicants' proximity circle.¹⁵ Accordingly, Route 32's relative proximity to the South McAllen Substation is not a specific benefit.

Staff also disagrees that Route 32 is comparable in cost to Route 1S after considering the alleged potential cost-savings for future transmission projects. Assuming *arguendo* that the estimated \$51.68 million additional future cost associated with a less-proximate supplemental route (e.g., Agreed Route or 1S) is accurate, Route 1S is still approximately \$15 million less expensive than Route 32. Moreover, this estimated additional cost has been doubted by other parties.¹⁶

Section III.D.11 (Use of Existing Compatible Right-of-Way and Apparent Property Lines) of Joint Applicants' Initial Brief stated: "The combined length of ROW paralleling existing transmission and other existing ROW, apparent property lines, and other natural or cultural features for Route 1S is 68%."¹⁷ Staff believes that the stated percentage is a typographical error and should read 78%. In case this is a factual dispute, however, Staff includes a detailed table below demonstrating that the correct calculation of paralleling ROW for Route 1S is 78.6%, which may be rounded to 79%.

¹⁴ *Id.* at Bates 13-14.

¹⁵ *See* Agreed Parties' Initial Brief at 31, 39-41.

¹⁶ *See Id.* at 37-39.

¹⁷ Joint Applicants Initial Brief at Bates 28.

	Route 32¹⁸		Agreed Route¹⁹		Route 1S²⁰	
Total length (miles)	117.5		96.1		86.3	
ROW using transmission lines	0	0.0%	0	0.0%	0	0.0%
ROW parallel to transmission lines	24.8	21.1%	26.6	27.7%	16.3	18.9%
ROW parallel to other ROW	44	37.4%	34.8	36.2%	39	45.2%
ROW parallel to property lines	18.3	15.6%	16.2	16.9%	12.5	14.5%
Total	87.1 miles	74.1%	77.6 miles	80.7%	67.8 miles	78.6%

Finally, Joint Applicants acknowledged the challenges of routing this transmission project, and stated that they would not oppose approval of Route 3S Modified (Agreed Route) given the advantages of a largely agreed-upon route.²¹

B. Agreed Parties' Initial Brief

The largest group of aligned parties, the "Agreed Parties," recommended Route 3S Modified (Agreed Route) and opposed the selection of any other route.²² To support this recommendation, the Agreed Parties argued that Route 3S Modified (Agreed Route):

(1) best represents the community values in the study area as the route is the result of numerous impacted landowners agreeing to have the transmission line placed on their property;

(2) is shorter in length and less expensive than any of the 32 original routes (Routes 1 through 32), and is allegedly comparable in length and expense to the 10 supplemental routes (Routes 1S through 10S);

(3) impacts fewer habitable structures than 28 other routes;

¹⁸ EA at Table 4-1.

¹⁹ Joint Applicants Ex. 22.

²⁰ Amended Application at Table 4-1S.

²¹ Joint Applicants' Initial Brief at Bates 4, 27.

²² Agreed Parties' Initial Brief at 8.

(4) has the least harmful impacts on land use when agricultural, residential, and commercial (future) development uses are considered;

(5) parallels existing transmission line infrastructure for a significant portion of its total length;

(6) parallels existing easements or property boundaries for approximately 81% of its total length; and

(7) is acceptable to Texas Parks and Wildlife Department from an environmental perspective.²³

The Agreed Parties oppose Route 1S for two primary reasons. First, Route 1S would cross the Wildlife Refuge, which would require federal approval.²⁴ Second, Route 1S is not supported by landowner intervenors.²⁵ The first reason was repeated by other parties and is discussed above. Also, a significant number of intervenor landowners do not appear to oppose selection of Route 1S, based on the concerns listed in their initial briefs.²⁶

C. D'Hemecourt Properties, Inc.'s Initial Brief

D'Hemecourt Properties, Inc. (D'Hemecourt Properties) owns land that would be directly affected by Links 194, 195, and 196b.²⁷ Moreover, D'Hemecourt Properties opposed any route that would use Link 196b (*e.g.*, Route 32).²⁸ In the event the Commission approves Route 32, D'Hemecourt Properties requested that Route 32 be modified to use Links 351a, 351b, 193c, 194, 201, 207, 208, and 209 rather than Links 196b, 200, and 203.²⁹

D'Hemecourt Properties compared Link 196b (on Route 32) to Links 193c and 194 (on the Agreed Route and Route 1S) using the factors set forth in PURA § 37.056(c) and P.U.C.

²³ *Id.* at 9.

²⁴ *Id.* at 18-20, 27.

²⁵ *Id.* at 22-23, 27-28.

²⁶ *See Supra.* at Section I (Introduction and Summary).

²⁷ D'Hemecourt Properties, Inc.'s Initial Brief on the Merits at 2.

²⁸ *Id.* at 3.

²⁹ *Id.*

SUBST. R. 25.101(b)(3)(B).³⁰ Based upon this review, D'Hemecourt Properties concluded that using Links 193c and 194 is superior to using Link 196b because the former links are shorter, affect fewer habitable structures, and pose less threat to potential development and property values.³¹

Staff notes that D'Hemecourt Properties would likely not object to Route 1S as this route does not use Link 196b.

D'Hemecourt Properties is a member of the Agreed Parties and incorporated the Agreed Parties' Initial Brief by reference.³²

D. EIA/Dougherty/Verde's Initial Brief

EIA/Dougherty/Verde Parties own land that would be directly affected by any of the 42 proposed routes.³³ However, EIA/Dougherty/Verde Parties specifically oppose the use of Links 41a, 41b, 42, 48, 50, 51, 54, 70, 99, 100, 135, 136b, and 137a.³⁴ Although EIA/Stag would prefer not to have the transmission line on its property, it has agreed to use Links 136a and 355 with the conditions set forth in the Joint Stipulation filed on December 2, 2013.³⁵

EIA/Stag opposed Route 1S because Links 135 and 137a (on Route 1S) would require a transmission structure in the southeast corner, thereby preventing the development of an entrance to the property in that location and limiting access from U.S. Highway 281.³⁶ Additionally, EIA/Dougherty/Verde Parties argued that Route 1S should not be selected because it would require federal approval to cross the Wildlife Refuge, and it is opposed by affected landowners, including EIA/Stag.³⁷

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.* at 3.

³³ Initial Post-hearing Brief of EIA/Dougherty/Verde Parties at 2.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ Initial Post-hearing Brief of EIA/Dougherty/Verde Parties at 5.

³⁷ *Id.* at 12.

EIA/Dougherty/Verde Parties are members of the Agreed Parties and incorporated the Agreed Parties' Initial Brief by reference.³⁸

E. Hidalgo County Regional Mobility Authority's Initial Brief

Hidalgo County Regional Mobility Authority stated that its interest is to ensure that its road projects and the Joint Applicants' transmission line project are planned and constructed as efficiently as possible.³⁹ Accordingly, Hidalgo County Regional Mobility Authority does not oppose the transmission line along and/or overlapping its right-of-way (ROW), nor does it oppose the transmission line crossing one of its roadways.⁴⁰

Although Hidalgo County Regional Mobility Authority identified a conflict with Link 169 prior to the hearing on the merits, this conflict was resolved through negotiations with Joint Applicants.⁴¹ Moreover, Hidalgo County Regional Mobility Authority compared Links 169 and 166, and found that Link 169 better satisfies the policy of prudent avoidance and is consistent with community values, as evidenced by the support of numerous intervenors and Staff for routes that use Link 169.⁴²

Staff notes that Hidalgo County Regional Mobility Authority would likely not object to Route 1S as this route could use Link 169 in a manner consistent with the negotiated agreement.

Hidalgo County Regional Mobility Authority is a member of the Agreed Parties and incorporated the Agreed Parties' Initial Brief by reference.⁴³

F. John Scaief Farms, John Scaief, Michael Scaief, Vista HC, Ltd., Vista MC, LLC, and Resaca Del Monte, Ltd.'s Initial Brief

John Scaief Farms, John Scaief, Michael Scaief, Vista HC, Ltd., and Vista MC, LLC opposed the use of Link 270 (on Route 32) because this link would cross directly through the center of their property and over residential areas.⁴⁴

³⁸ *Id.* at 3.

³⁹ Hidalgo County Regional Mobility Authority's Initial Brief at 2.

⁴⁰ *Id.*

⁴¹ *Id.* at 3.

⁴² *Id.* at 6.

⁴³ *Id.* at 3-4, 6-8.