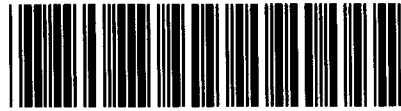




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JOINT APPLICATION OF ELECTRIC  
TRANSMISSION TEXAS, LLC AND  
SHARYLAND UTILITIES, L.P. TO  
AMEND THEIR CERTIFICATES OF  
CONVENIENCE AND NECESSITY  
FOR THE PROPOSED NORTH  
EDINBURG TO LOMA ALTA  
DOUBLE-CIRCUIT 345-KV  
TRANSMISSION LINE IN HIDALGO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

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

JOINT APPLICANTS' REPLY BRIEF

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January 8, 2013

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## I. INTRODUCTION

Joint Applicants continue to believe that Route 32 is the best route presented in this case. First, it represents the best short- and long-term transmission planning solution because it passes through the Routing Circle, thereby best facilitating a future connection at the South McAllen Substation. Second, it impacts the least number of habitable structures of any route because it skirts the western and southern edges of McAllen. Third, it takes advantage of an opportunity to mitigate the long-term impacts of the impending South McAllen interconnection on landowners and the environment by effectively combining two projects into one.

As acknowledged in their initial brief, however, Joint Applicants recognize the considerable accomplishment achieved by a majority of the intervening parties to reach agreement on accepting the Agreed Route.<sup>1</sup> Joint Applicants reiterate that community agreement around a route is important for several reasons: it facilitates ROW acquisition and construction, reflects community values, gives landowners input into how their land is affected by the project, and generally eases the burden on the community by focusing the impacts of the line on willing landowners.<sup>2</sup> Thus, while Joint Applicants continue to believe Route 32 better meets the objectives of ERCOT and affects many fewer habitable structures than the Agreed Route, Joint Applicants would not oppose the Agreed Route in light of the considerations of the intervenors' agreement.

Joint Applicants' initial brief provides a comprehensive summary of Joint Applicants' position in this proceeding, and in many cases includes a complete response to the claims and arguments made by the other parties. In addition, Joint Applicants provide below additional responses to specific arguments made by the other parties with respect to Preliminary Order Issues 2, 4, and 7 where appropriate.

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<sup>1</sup> Joint Applicants' Initial Brief at 2-3 and 27 (Dec. 18, 2013).

<sup>2</sup> *Id.*

**II. PRELIMINARY ORDER ISSUE NO. 2: Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)?**

Yes. No party contests the “need” for the North Edinburg to Loma Alta 345 kV transmission line proposed in this case.<sup>3</sup> The parties do, however, attack Joint Applicants’ implementation of ERCOT’s recommendation to route the project in proximity to the South McAllen Substation. This issue is distinct from the question of need, and is addressed below in response to Preliminary Order Issue No. 4 (route selection).

**III. PRELIMINARY ORDER ISSUE NO. 4: Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B)?**

Joint Applicants continue to believe that Route 32 represents the best transmission planning solution and should be adopted by the Commission.

***A. Routes Passing through the Routing Circle Represent the Best Short- and Long-Term Transmission Planning Solution.***

The Agreed Parties’ briefing<sup>4</sup> on the “Routing Circle” perfectly illustrates the difficulty with their approach to ERCOT’s recommendation in this proceeding: the brief rests primarily on attacking the independent entity charged with overseeing the reliability of ERCOT’s grid and second guessing the Commission’s transmission planning process. The briefing critiques ERCOT’s conduct in this project<sup>5</sup> and the regional planning group (RPG) review process more generally,<sup>6</sup> misunderstands both the Application and the Independent Review,<sup>7</sup> and repeatedly claims that an eleven-mile connection is essentially equivalent to a three-mile connection<sup>8</sup> (notwithstanding the undisputed testimony to the contrary from Mr. Caskey,<sup>9</sup> a licensed electrical

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<sup>3</sup> See Joint Applicants’ Initial Brief at 5-9 (Dec. 18, 2013).

<sup>4</sup> Because the Agreed Parties were the only intervenors to substantively brief issues about “proximity” to South McAllen, Joint Applicants have structured their reply briefing on this issue to track the Agreed Parties’ initial briefing.

<sup>5</sup> Agreed Parties’ Initial Brief at 32 (Dec. 18, 2013).

<sup>6</sup> Agreed Parties’ Initial Brief at 33-34 (Dec. 18, 2013).

<sup>7</sup> Agreed Parties’ Initial Brief at 34-36 (Dec. 18, 2013).

<sup>8</sup> Agreed Parties’ Initial Brief at 36-40 (Dec. 18, 2013).

<sup>9</sup> Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 26.

engineer<sup>10</sup>), and finally, after briefly digressing into “fran[k]” accusations of Joint Applicants’ “calculated” attempts to “intimidate” the Commission,<sup>11</sup> attacks the entire load-forecasting process used by ERCOT to review the need for transmission line projects.<sup>12</sup>

The benefit of the RPG process is not that ERCOT will be infallible; the benefit is that it preempts the sorts of arguments offered by the Agreed Parties by having a qualified third-party entity provide analysis for and oversight of the transmission planning process and ultimately make an unbiased recommendation that is then reviewed by a broad cross-section of industry participants.<sup>13</sup> But in attacking ERCOT’s recommendation, the Agreed Parties have lashed out at the entity, the analysis, the oversight, and now, finally, the entire transmission planning process. The Commission should reject after-the-fact transmission planning by affected landowners precisely because it undermines the foundation of the transmission planning process by threatening to turn every CCN proceeding into an impromptu workshop and rulemaking proceeding led by parties with a strong interest in a specific outcome.

*1. Order No. 6 Did Not Preclude Further Discussion of the Merits of the Routing Circle.*

The Agreed Parties imply that Order No. 6 resolved these issues when it concluded that it was not necessary that *all* routes under consideration pass through the Routing Circle.<sup>14</sup> But as Order No. 6 makes clear, “the ALJ d[id] not find it prudent to dismiss from consideration any western routes or routes that include backtracking links,” and instead reserved for the Commission the ultimate decision of whether to select a route that utilizes the Routing Circle.<sup>15</sup> Regardless of whether it was appropriate to have *all* routes pass through the Routing Circle around South McAllen, Joint Applicants still contend that the *best* routes do, and one should be selected for that reason.

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<sup>10</sup> Direct Testimony of Mark E. Caskey, JA Ex. 3 at 1.

<sup>11</sup> Agreed Parties’ Initial Brief at 38 (Dec. 18, 2013).

<sup>12</sup> Agreed Parties’ Initial Brief at 40-41 (Dec. 18, 2013).

<sup>13</sup> See, e.g., Deposition of Jeff Billo, JL Ex. 12 at 72 (stating that ERCOT’s role is to provide technical analysis to support need determinations).

<sup>14</sup> Agreed Parties’ Initial Brief at 31 (Dec. 18, 2013).

<sup>15</sup> Order No. 6 at 26 (Oct. 21, 2013).

**2. ERCOT's Proximity Recommendation Is the Best Short- and Long-Term Transmission Planning Solution.**

The Agreed Parties' position on this point can be encapsulated in this claim:

... 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. 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.<sup>16</sup>

This argument fails for two reasons, as detailed below: (1) ERCOT's endorsement—without more—is sufficient reason to route the Project "in proximity to" the South McAllen Substation, and (2) ERCOT's endorsement is amply supported by the evidence presented in this case.

ERCOT's endorsement alone justifies routing "in proximity to" the South McAllen Substation. ERCOT is the entity charged with overseeing the reliability of 80% of the Texas transmission grid,<sup>17</sup> and it has made this type of "proximity" recommendation before.<sup>18</sup> ERCOT's endorsement is not only the primary evidence of need for this Project, it is the primary evidence of need for every reliability project. This is the regulatory scheme and process established by the Texas legislature and the Commission and provides unbiased recommendations from qualified transmission planners based on broad input and review by all market segments. ERCOT endorsed routing the Project "in proximity to" the South McAllen Substation<sup>19</sup> and that recommendation must be given "great weight" by the Commission.<sup>20</sup>

The Agreed Parties, however, argue that ERCOT's recommendation should not be given much weight at all, and they attack the process. Those arguments are contrary to the evidence. ERCOT's review was conducted properly. The Agreed Parties rehash the same assertions

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<sup>16</sup> Agreed Parties' Initial Brief at 32 (Dec. 18, 2013).

<sup>17</sup> Preliminary Hearing Tr. at 112 (Oct. 8, 2013).

<sup>18</sup> *Application of Electric Transmission Texas, LLC to Amend Its Certificate of Convenience and Necessity for the Proposed Lobo to Rio Bravo to North Edinburg Double-Circuit 345 kV Transmission Line in Webb, Zapata, Jim Hogg, Brooks, Staff, and Hidalgo Counties*, Docket No. 40728, Order at 2 (May 9, 2013) (approving a project routed in "proximity" to an existing substation).

<sup>19</sup> Application, Attachment 6 at 1, JA Ex. 1.

<sup>20</sup> P.U.C. SUBST. R. 25.101(b)(3)(A)(ii).

implying that somehow the ERCOT review process in this case was atypical—about how RPG was not presented with the “proximity” issue, about how even though RPG “works on consensus,” consensus was “never reached” in this case due to the “250 MW load” additions in Brownsville, about how the Project was nonetheless presented to the Technical Advisory Committee (TAC) and the Board, and about how TAC and the Board never discussed the “proximity” determination.<sup>21</sup> Then the Agreed Parties finally acknowledge three crucial facts:

- “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.”<sup>22</sup>
- “TAC considers materials presented by ERCOT Staff and may discuss issues regarding a project but does not conduct its own evaluation of the project. It is *not* TAC’s function to analyze transmission projects; rather TAC reviews the projects as presented to it by ERCOT Staff.”<sup>23</sup>
- “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 the information presented by ERCOT Staff.”<sup>24</sup>

Taken together, these three admissions paint a very different picture of the ERCOT process than the one presented by the intervenors during the preliminary hearing on route adequacy. Contrary to the portrayal of the RPG process in this case as ERCOT Staff operating without sufficient oversight from the Board and without sufficient collaboration with the RPG stakeholders, these three facts show that the ERCOT review process worked as intended. The utilities proposed a project,<sup>25</sup> RPG stakeholders provided comments on that proposal,<sup>26</sup> ERCOT Staff analyzed those comments and the technical need for the project<sup>27</sup> (providing an interim update to RPG in November<sup>28</sup>) before making a final recommendation to TAC,<sup>29</sup> TAC reviewed

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<sup>21</sup> Agreed Parties’ Initial Brief at 32 (Dec. 18, 2013).

<sup>22</sup> Agreed Parties’ Initial Brief at 33 (Dec. 18, 2013).

<sup>23</sup> Agreed Parties’ Initial Brief at 33 (Dec. 18, 2013).

<sup>24</sup> Agreed Parties’ Initial Brief at 33 (Dec. 18, 2013).

<sup>25</sup> Application, JA Ex. 1, Attachment 6 at 4.

<sup>26</sup> Preliminary Hearing Tr. at 179-81 (Oct. 8, 2013); Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 20-22,

<sup>27</sup> See Application, JA Ex. 1, Attachment 6 at 3-32

<sup>28</sup> See Status Report, JL Ex. 7; Preliminary Hearing Tr. at 174-77 (Oct. 8, 2013).

Staff's recommendation<sup>30</sup> (including the Independent Review<sup>31</sup>) and made its own recommendation to the Board of Directors,<sup>32</sup> and the Board of Directors reviewed TAC's recommendation and ERCOT Staff's analysis (including the Independent Review)<sup>33</sup> before finally endorsing ERCOT Staff's recommended project.<sup>34</sup> If "there was *no discussion* of the proximity issue during either presentation,"<sup>35</sup> that likely is because no one on TAC or the Board of Directors thought it required discussion. The Agreed Parties' alternate conclusion—that somehow the "proximity" recommendation slipped through unnoticed—only makes sense if no one on TAC or the Board bothered to read either the Independent Review (which devotes two full pages to defending this recommendation)<sup>36</sup> or the endorsement letter (which clearly states the "proximity" recommendation).<sup>37</sup>

ERCOT's "proximity" recommendation is amply supported by the evidence. ERCOT's "proximity" recommendation rests on a straight-forward syllogism: (1) there is an impending reliability need in the western LRGV, (2) that impending reliability need is best solved by connecting a new 345 kV source from the North Edinburg Substation to the South McAllen Substation, and therefore (3) the Project, which is such a source, should be routed in such a way as to facilitate that connection. Both of these premises are correct, and therefore so is ERCOT's conclusion.

First, ERCOT correctly identified the reliability needs near the South McAllen Substation. In particular, the Independent Review sets out up to eleven lines that by 2020 will be either overloaded or nearly overloaded in the event of a G-1 + N-1 contingency.<sup>38</sup> Because

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<sup>29</sup> Preliminary Hearing Tr. at 73, 189 (Oct. 8, 2013).

<sup>30</sup> Preliminary Hearing Tr. at 74-77, 189 (Oct. 8, 2013); ERCOT Staff Presentation to TAC, JL Ex. 8 at 10, 20; ERCOT Review Process Minutes & Memorandum, JL Ex. 6 at 13; Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 22.

<sup>31</sup> Preliminary Hearing Tr. at 189 (Oct. 8, 2013); Application, JA Ex. 1, Attachment 6 at 3-32.

<sup>32</sup> Preliminary Hearing Tr. at 74-77, 189; ERCOT Staff Presentation to TAC, JL Ex. 8 at 10, 12; ERCOT Review Process Minutes & Memorandum, JL Ex. 6 at 13; Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 22.

<sup>33</sup> Preliminary Hearing Tr. at 189 (Oct. 8, 2013); Application, JA Ex. 1, Attachment 6 at 3-32.

<sup>34</sup> Application, JA Ex. 1, Attachment 6 at 1-2.

<sup>35</sup> Agreed Parties' Initial Brief at 32 (Dec. 18, 2013).

<sup>36</sup> Application, JA Ex. 1, Attachment 6 at 23-24.

<sup>37</sup> Application, JA Ex. 1, Attachment 6 at 1-2.

<sup>38</sup> Application, JA Ex. 1, Attachment 6 at 24.

ERCOT has both a short-term and long-term planning role,<sup>39</sup> it correctly exercised its authority to examine and recommend the best short-term and long-term solution. Aside from general criticisms of ERCOT's load forecasting (discussed below), no party presented any evidence contesting this claim. In fact, as discussed below, the need is now more urgent than originally believed. The latest ERCOT documents reveal that what was initially considered a long-term planning solution to a long-term planning need has become a short-term planning solution to a short-term planning need.

Second, connecting a new 345 kV source to the South McAllen Substation is the best long-term solution. The Agreed Parties claim that ERCOT identified upgrades to existing 138 kV lines as an "alternative solution to the future reliability issues in the western LRGV region,"<sup>40</sup> but neglect to mention that ERCOT identified **and rejected** that "alternative solution" on two grounds. First, these upgrades would not be practicable, in light of information provided by the owner of the 138 kV lines, AEP Texas Central Company.<sup>41</sup> This rationale is amply supported by Mr. Caskey's discussion of the difficulty with taking such heavily loaded lines out of service.<sup>42</sup> And while the Agreed Parties' witness Mr. Dauphinais believes that these concerns are overstated, he did not offer any compelling analysis or even a rationale to support his belief.<sup>43</sup> Second, this argument fails because Mr. Dauphinais' analysis is not relevant to a comparison of the routes under consideration. Mr. Dauphinais weighs the cost of routing "in proximity to" South McAllen versus the cost of the line upgrades. But, that is not the issue under consideration. The parties are in agreement that a route should be approved for the project. Once a route is approved, the focus shifts to the cost of a "tap" versus the cost of upgrades. Based on the routes being considered, the longest possible future line that will be needed to connect the Project to South McAllen (an eleven-mile loop) would cost approximately about \$71 million to build (based on the average of \$3.23 million per mile), which is less costly than the \$95 million needed to upgrade the existing 138 kV lines (even after accounting for the cost of an added auto-transformer).

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<sup>39</sup> Deposition of Jeff Billo, JL Ex. 12 at 10; ERCOT Planning Guide §§ 3.1.3, 3.1.1.1, JL Ex. 12 at Exhibit 11.

<sup>40</sup> Agreed Parties' Initial Brief at 34 (Dec. 18, 2013),

<sup>41</sup> Deposition of Jeff Billo, JL Ex. 12 at 72-73.

<sup>42</sup> Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 27-28.

<sup>43</sup> See Preliminary Hearing Tr. at 39-40.

Ultimately, however, it is not whether the parties in this proceeding believe that a South McAllen interconnection is needed, it is whether ERCOT believes that such a connection is needed. Every indication has been that ERCOT *will* recommend that the Project be connected to the South McAllen Substation.<sup>44</sup> In fact, ERCOT's 2013 Regional Transmission Plan Report<sup>45</sup> indicates that the Project will need to be connected to South McAllen to resolve line overloading in 2016, and even states that these "overloading issues may occur as early as 2014, but since the [Cross Valley] project construction may not reach completion by that time, the TSP will need to consider mitigation plans for a short-term solution."<sup>46</sup> This suggests that not only is there a need, but that need is imminent, materializing as soon as 2014, according to the most recent ERCOT documents. Therefore, the decision on whether to route via South McAllen is simply a matter of arithmetic. As detailed in Joint Applicants' initial brief<sup>47</sup> and Mr. Caskey's rebuttal testimony,<sup>48</sup> Route 32 is both less expensive and less impactful on habitable structures than the Agreed Route (in the long run). Similarly, Route 32 is only slightly more expensive but significantly less impactful on habitable structures than Route 1S would be (in the long run). Refusing to resolve this issue South McAllen interconnection now would not just be kicking the can down the road, it would be missing a window of opportunity to plan this Project and its corollary South McAllen "tap" project in such a way as to minimize the cumulative effect of both projects on landowners and ERCOT rate payers. This is not mere speculation; it is precisely why ERCOT said in its Independent Review and endorsement letter that the Project should be routed "in proximity to" the South McAllen Substation.

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<sup>44</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 5-6, MEC-RT-1 & MEC-RT-2.

<sup>45</sup> ERCOT, 2013 Regional Transmission Plan Report at 109-10 (Dec. 30, 2013). This report has only recently been finalized. However, the most recent status update for this report has been admitted into evidence and discussed during the hearing on the merits, and Joint Applicants have filed a motion requesting that the ALJ take official notice of the final version of the report. A copy of that report is included with Joint Applicants' motion. See *Joint Applicants' Motion to Take Official Notice and Admit a Late-filed Exhibit* (Jan. 3, 2014). The 2013 Report and the impending need of the South McAllen tap is also referenced in ERCOT's December 2013 *Report on Existing and Potential Electric System Constraints and Need*, which as of January 2, 2014, is publicly available at <http://www.ercot.com/news/presentations/>.

<sup>46</sup> *Id.* at 109.

<sup>47</sup> Joint Applicants' Initial Brief at 11-13.

<sup>48</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 3-4.

### *3. The Routing Circle Is a Sensible Interpretation of ERCOT's Directive.*

The Agreed Parties make much ado about the fact that ERCOT neither defined nor was consulted about "proximity."<sup>49</sup> But this argument misses the mark. Although the Routing Circle was developed in order to implement ERCOT's directive, the design of the Routing Circle is not (and has not ever been) based on a specific definition of the term "proximity." In fact, ERCOT's understanding of the term "proximity" does not control the size of the Routing Circle or whether it was reasonable to develop a Routing Circle at all. Joint Applicants advocate the routing circle based on two facts.

First, the Independent Review makes clear (both in its analysis and its plain language) that the purpose of routing "in proximity to" the South McAllen Substation is to facilitate a future connection.<sup>50</sup> It makes no sense to route the line far away from the South McAllen Substation if the entire purpose of routing "in proximity to" that substation is to eventually connect to it. Note that this is true irrespective of which method of connection is ultimately used.

Second, as discussed below, the evidence suggests that Joint Applicants' "proposal" (an admittedly loose term, since no connection is proposed at this time) to utilize existing 138 kV lines would be the most cost-effective and least problematic method of connecting the Project to the South McAllen Substation.<sup>51</sup> In light of that, a short (less than three miles) and therefore lower-impedance connection would be ideal.<sup>52</sup>

Simply put, the Routing Circle reflects the evaluation of the potential routing constraints into the South McAllen Substation and the transmission planning principals that best provide a future connection more efficiently and effectively that Joint Applicants have already explained at length in this proceeding. ERCOT has acknowledged that it leaves these types of routing decisions to the utility and the Commission.<sup>53</sup> Joint Applicants believe they have made a reasonable recommendation in light of the future purpose and likely method of the interconnection, and they propose that the Commission approve it.

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<sup>49</sup> Agreed Parties' Initial Brief at 34-35 (Dec. 18, 2013).

<sup>50</sup> Application, JA Ex. 1, Attachment 6 at 20.

<sup>51</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 6-7.

<sup>52</sup> Preliminary Hearing Tr. at 146-49, 190 (Oct. 8, 2013).

<sup>53</sup> Deposition of Jeff Billo, JL Ex. 12 at 72.

4. *It Does Not Matter That the "Application Did Not Propose to Connect the North Edinburg to Loma Alta Transmission Line to the South McAllen Substation in the Future."*<sup>54</sup>

The Agreed Parties fault Joint Applicants for their proposing a different future connection than ERCOT analyzed.<sup>55</sup> To be perfectly clear, Joint Applicants are not proposing or seeking approval of *any* future connection in this Project (direct or indirect). Further, ERCOT has not recommended a direct connection at this time,<sup>56</sup> and thus a direct connection would have been inappropriate (in addition to being impracticable without expanding the South McAllen Substation<sup>57</sup>). Thus, contrary to the Agreed Parties' claim,<sup>58</sup> ERCOT in fact never "recommended" a direct connection, it only recommended routing "in proximity to" the substation<sup>59</sup> *in anticipation of* a future connection.<sup>60</sup> Because of that, this Project is limited to constructing a transmission line from the North Edinburg Substation to the Loma Alta Substation routed in proximity to the South McAllen Substation. Granted, the routing facilitates what Joint Applicants believe will most likely be the best method of a future connection,<sup>61</sup> but the adoption of Route 32 *in no way* forecloses any connection option, nor is it dependent upon that connection option. Route 32 preserves all potential future connection options for ERCOT and the Commission, whether direct or indirect.<sup>62</sup> The details of that future connection will be resolved at a later date.<sup>63</sup>

It should be reemphasized that all of the methods to connect a route passing through the Routing Circle to the South McAllen Substation are essentially identical.<sup>64</sup> Any connection

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<sup>54</sup> Agreed Parties' Initial Brief at 35 (Dec. 18, 2013).

<sup>55</sup> Agreed Parties' Initial Brief at 35-36 (Dec. 18, 2013).

<sup>56</sup> Application, JA Ex. 1, Attachment 6 at 1-2.

<sup>57</sup> Preliminary Hearing Tr. at 150 (Oct. 8, 2013).

<sup>58</sup> Agreed Parties' Initial Brief at 36 ("Thus it is not clear why the Joint Applicant's [sic] proposed this alternative connection, particularly given the fact that ERCOT did not study it and would have to perform some analysis to determine if this connection would satisfy *their recommendation* for resolving N-1 + G-1 contingencies in the 2020 time frame.") (emphasis added).

<sup>59</sup> Application, JA Ex. 1, Attachment 6 at 1-2.

<sup>60</sup> Application, JA Ex. 1, Attachment 6 at 24.

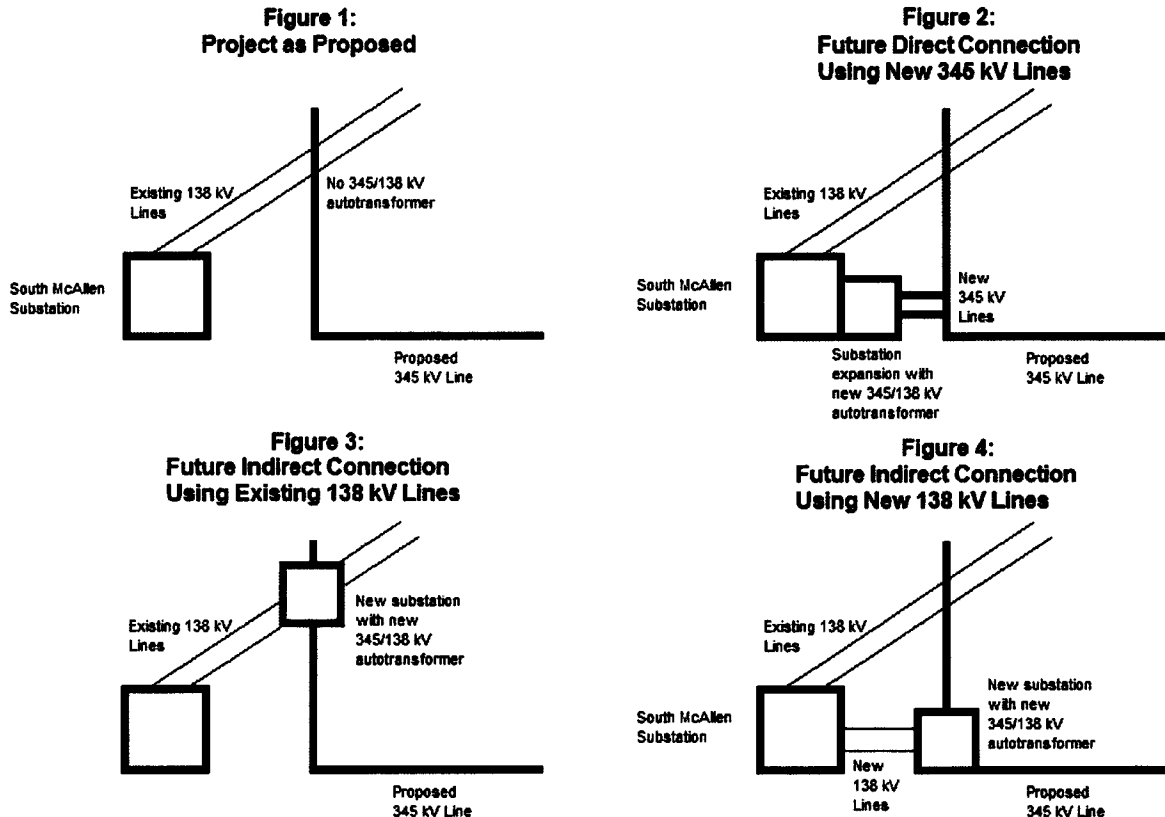
<sup>61</sup> Direct Testimony of Mark E. Caskey, JA Ex. 3 at 23.

<sup>62</sup> Preliminary Hearing Tr. at 135-36, 153 (Oct. 8, 2013).

<sup>63</sup> Preliminary Hearing Tr. at 137 (Oct. 8, 2013).

<sup>64</sup> Deposition of Jeff Billo, JL Ex. 12 at 44, 100 (specifying that the connectivity of the connection, not the type of connection, is the relevant factor).

(direct or indirect) will necessarily include at least two lines<sup>65</sup> connecting the Project to the South McAllen Substation and a 345/138 kV autotransformer<sup>66</sup>—because the different operating voltages of the lines make it impossible to directly connect a 345 kV transmission line and a 138 kV transmission line. Though there are many potential ways to connect the Project to the South McAllen Substation, schematically they are essentially equivalent, as shown below:



Given that these alternatives are similar, it is easy to see why Joint Applicants suggest that an indirect connection using existing lines (Figure 3) is the least intrusive and most cost-effective solution: it does not require any new right-of-way or the construction of any new transmission lines.<sup>67</sup> It is also easy to see that selecting Route 32 would not foreclose any future interconnection option, even a subsequent direct connection (Figure 2).

<sup>65</sup> Preliminary Hearing Tr. at 144-46 (Oct. 8, 2013).

<sup>66</sup> Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 11-12.

<sup>67</sup> Agreed Parties' Initial Brief at 37 (Dec. 18, 2013).

*5. The Connection Proposed by the Agreed Parties Is Unworkable.*

Agreed Parties suggest that, in the event a connection is needed, eleven-mile long 138 kV lines could be used.<sup>68</sup> They suggest that these lines would originate from a substation on Link 169, and then a connection would be accomplished through two or more eleven-mile 138 kV lines.<sup>69</sup> This, they argue, would be equivalent to Joint Applicants' proposal to utilize three-mile long 138 kV lines.<sup>70</sup>

This argument is wrong for three reasons. First, it is an argument from silence. There is no evidence to support the claim that a connection using two or more eleven-mile 138 kV lines would be equivalent to a connection using two or more three-mile 138 kV lines. Instead the argument is predicated on the claim that "[t]here is no evidence in the record to suggest that a connection using 138-kV lines to connect the South McAllen Substation to the Agreed Route . . . could not be accomplished in a manner almost identical to that proposed in the Application."<sup>71</sup>

Second, the record is not actually silent on this point. Mr. Caskey (a licensed electrical engineer<sup>72</sup> whose qualifications<sup>73</sup> were not disputed) repeatedly emphasized that a three-mile connection is qualitatively different than an eleven-mile connection in terms of the amount of impedance,<sup>74</sup> a basic fact for which no extended study is warranted.

Third, this argument relies on utilizing 138 kV transmission lines that do not exist. Though the precise character of a future interconnection is reserved for ERCOT and the utility(ies) charged with constructing that interconnection, it has been undisputed from the outset of this proceeding that at least two high-capacity 138 kV transmission lines would be needed (if 138 kV transmission lines are used).<sup>75</sup> As shown on EA Figure 5-1, there are roughly half a

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<sup>68</sup> Agreed Parties' Initial Brief at 37 (Dec. 18, 2013).

<sup>69</sup> Agreed Parties' Initial Brief at 37 (Dec. 18, 2013).

<sup>70</sup> Agreed Parties' Initial Brief at 37-39 (Dec. 18, 2013).

<sup>71</sup> Agreed Parties' Initial Brief at 39 (Dec. 18, 2013) (emphasis added).

<sup>72</sup> Direct Testimony of Mark E. Caskey, JA Ex. 3 at 1.

<sup>73</sup> Direct Testimony of Mark E. Caskey, JA Ex. 3 at 1.

<sup>74</sup> Route Adequacy Testimony of Mark E. Caskey, JA Ex. 5 at 12, 24-25; Preliminary Hearing Tr. at 146-49 (Oct. 8, 2013); Tr. at 135-36 (Dec. 4, 2014).

<sup>75</sup> Preliminary Hearing Tr. at 144-46 (Oct. 8, 2013).

dozen 138 kV transmission lines in the immediate vicinity of the South McAllen Substation.<sup>76</sup> By contrast, there is only one existing 138 kV transmission line tied to the South McAllen Substation in the immediate vicinity of Link 169 (near its intersection with Link 193a),<sup>77</sup> the point of connection proposed by the Agreed Parties.<sup>78</sup> Irrespective of the conductor status of this 138 kV line, at least one other line would likely be needed to implement the Agreed Parties' proposal *even as they have depicted it in their briefing*,<sup>79</sup> let alone to replicate the effectiveness of a short, three-mile connection. Thus, even on Agreed Parties' own terms, at least one new 138 kV transmission line would be needed to implement this suggested solution.

*6. The Agreed Parties' Attack of the ERCOT Process Is Best Reserved for a Rulemaking Proceeding.*

The remainder of the Agreed Parties' argument is devoted to criticizing the ERCOT transmission planning process. In particular, Joint Applicants provided interim updates of ERCOT planning reports showing that ERCOT is still planning for a connection between the Project and the South McAllen Substation, perhaps even as early as 2016.<sup>80</sup> The Agreed Parties criticize this approach on two grounds: (1) these reports are not supported by "substantive analysis" in the record,<sup>81</sup> and (2) ERCOT has been persistently inaccurate in over-forecasting load and thus available reserves.<sup>82</sup>

But these reports were not presented as "substantive analysis" supporting a South McAllen interconnection. The "substantive analysis" supporting the need for a South McAllen interconnection has already been provided: it is in the ERCOT Independent Review and recommendation that the project be routed "in proximity to" the South McAllen Substation.<sup>83</sup> These documents merely confirm that ERCOT still considers a connection between the Project and the South McAllen Substation to be necessary. Every indication is that an interconnection to the South McAllen Substation will occur, a fact to which the Commission should not turn a blind

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<sup>76</sup> Application, JA Ex. 1, Attachment 1, at Figure 5-1, Sheet 3 of 6.

<sup>77</sup> Application, JA Ex. 1, Attachment 1, at Figure 5-1, Sheet 4 of 6.

<sup>78</sup> Agreed Parties' Initial Brief at 37 (Dec. 18, 2013).

<sup>79</sup> See Agreed Parties' Initial Brief at 37 (Dec. 18, 2013).

<sup>80</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 5-6, MEC-RT-1 & MEC-RT-2.

<sup>81</sup> Agreed Parties' Initial Brief at 40 (Dec. 18, 2013).

<sup>82</sup> Agreed Parties' Initial Brief at 40-41 (Dec. 18, 2013).

<sup>83</sup> Application, JA Ex. 1, Attachment 6 at 1-2, 23-24, 29.

eye, particularly when ERCOT has explicitly endorsed this Project and directed that it be routed “in proximity to” the South McAllen Substation in anticipation of that future connection.<sup>84</sup>

The accuracy of ERCOT’s load forecasting, on the other hand, is not an inappropriate issue to consider in this proceeding, for two reasons. First, it would dramatically expand the scope of this (and every other) CCN proceeding, in that it is not simply an attack on the need for *this* Project, but an attack on ERCOT’s load forecasting as a whole, and therefore potentially the need for *every* project proposed by ERCOT. Second, these load forecasting issues are best discussed in their full context. Joint Applicants do not dispute that this “has been an issue of considerable controversy and debate in the Commission’s ongoing resource adequacy discussions,”<sup>85</sup> but respectfully submit that the resource adequacy proceeding<sup>86</sup> is precisely where that controversy and debate should remain until such time as the Commission resolves it.

Lastly, even if ERCOT does to some extent over-forecast the rate of load growth, that merely means that a South McAllen interconnection will not be needed as soon as expected (2014); it does not mean that a South McAllen interconnection will not be needed at all.

***B. Route 32 Best Addresses the Requirements of PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B).***

***1. Prudent Avoidance***

Joint Applicants continue to believe that the impact of the approved line on habitable structures is a significant factor that must be given considerable weight. With that imperative in mind, Joint Applicants chose Route 32 as the route that best addresses the requirements of PURA and the Commission’s Substantive Rules, including the proximity of the Project to habitable structures.<sup>87</sup> As compared to the supplemental alternative routes, including the Agreed Route and Route 1S, and as further addressed above, Joint Applicants believe Route 32 provides the best short- and long-term solution to the reliability needs of the LRGV.<sup>88</sup> As the Agreed Parties’

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<sup>84</sup> Application, JA Ex. 1, Attachment 6 at 1-2, 23-24, 29.

<sup>85</sup> Agreed Parties’ Initial Brief at 41 (Dec. 18, 2013).

<sup>86</sup> *Commission Proceeding to Ensure Resource Adequacy in Texas*, Docket No. 40000 (Dec. 15, 2011).

<sup>87</sup> Direct Testimony of Mark E. Caskey, JA Ex. 3 at 26-27.

<sup>88</sup> Supplemental Direct Testimony of Mark E. Caskey, JA Ex. 12 at 4.

Initial Brief acknowledges, the Agreed Route has significantly more habitable structures within 500 feet of its centerline (951) than does Route 32 (465) or Route 1S (711).<sup>89</sup>

To demonstrate the asserted superiority of the Agreed route to Route 32, the Agreed Parties' Initial Brief, and the briefs of the City of San Juan, d'Hemecourt Properties, Inc. (d'Hemecourt), and the Hidalgo County Regional Mobility Authority (HCRMA) focus on and compare links in isolation when considering impact on habitable structures rather than examining the comparison of the proposed routes in their respective totalities.<sup>90</sup> In particular, the Agreed Parties' Initial Brief and the HCRMA's Initial Brief both point out that Link 169, utilized in the Agreed Route, viewed alone, accounts for 39 percent of all habitable structures (371 out of 951) that would be impacted by the route, seemingly to show that the link inordinately bears most of the impact of the entirety of the route to habitable structures.<sup>91</sup> The City of San Juan likewise argues that Link 166, which has 426 habitable structures within 500 feet of its centerline and is utilized by other eastern routes (including the supplemental routes), inordinately impacts habitable structures, schools, and potential future development.<sup>92</sup> While the City of San Juan argues these considerations as negative factors for choosing a route that utilizes Link 166, the Agreed Parties seemingly downplay similar considerations that also apply to Link 169 when weighing the merits between Route 32 and the Agreed Route. D'Hemecourt argues as well the merits of fewer habitable structures impacted by Links 193c and 194 utilized by the Agreed Route as opposed to Link 196b utilized by Route 32, although the structure number count is much smaller than those compared to Links 166 and 169. Nevertheless, the various links should not be analyzed in isolation in an attempt to demonstrate a minimization of the impact of a proposed route in its totality.

Joint Applicants chose Route 32 taking into consideration that, from end point to end point, it substantially impacted many fewer habitable structures than most of the other alternative routes, including when compared to the original eastern routes and the supplemental routes. Route 32 in its totality accomplishes this minimization of impact on habitable structures to a reasonable extent and adheres to the Commission's policy of prudent avoidance even though it is

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<sup>89</sup> Agreed Parties' Initial Brief at 14.

<sup>90</sup> *Id.* at 15-17; Initial Brief of the City of San Juan at 4-9; d'Hemecourt Properties, Inc.'s Initial Brief at 3-8; and Hidalgo County Regional Mobility Authority's Initial Brief at 4.

<sup>91</sup> Agreed Parties' Initial Brief at 14-15; Hidalgo County Regional Mobility Authority's Initial Brief at 4.

<sup>92</sup> Initial Brief of the City of San Juan at 5-6.

a longer route than the Agreed Route and Route 1S because it goes west and south of the City of McAllen and passes within three miles of the South McAllen Substation. Furthermore, Joint Applicants accomplished this routing of Route 32 with the additional consideration that routing alternatives in the study area required navigating a high density of development across the LRGV. Joint Applicants' and POWER's line routing process in the LRGV presented routing constraints with development density conditions that were very unusual, if not unprecedented. Given the extent of the routing constraints, it is not surprising that high numbers of potentially impacted habitable structures by all routes would occur. However, the development of all the routes and Route 32 in particular sought to minimize that impact as much as reasonably possible while meeting the objective to route the line from its end points and in proximity to the South McAllen Substation.

Joint Applicants continue to commit to working with landowners to further seek to minimize through minor routing adjustments the impact to properties by the transmission line ultimately chosen. Thus, for example, Joint Applicants have agreed to consider certain adjustments along a portion of Link 169, should the Commission decide to select a route that utilizes that link, such as the Agreed Route or Route 1S.<sup>93</sup> As HCRMA's Initial Brief and the Agreed Parties' Initial Brief address, Joint Applicants will work with the HCRMA on an easement grant from HCRMA should it acquire certain property in fee along Link 169 for its International Bridge Trade Corridor highway project by no later than March 31, 2015.<sup>94</sup> It appears that HCRMA has taken steps towards acquiring the pertinent property by the date mentioned to coincide with the timing of Joint Applicants' construction of the line by issuing \$63 million in bonds to allow its highway project schedule to be accelerated, including acquisition of right-of-way.<sup>95</sup> With the HCRMA being the sole property interest owner of the pertinent property along a portion of Link 169, the efforts of Joint Applicants' may be eased in obtaining some right-of-way for line siting including eliminating the need to relocate some structures in the vicinity along the link. However, it will not entirely eliminate the need to obtain

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<sup>93</sup> Rebuttal Testimony of Teresa B. Trotman, JA Ex. 18 at 2-4; Hidalgo County Regional Mobility Authority's Initial Brief at 4-6; and Agreed Parties' Initial Brief at 15 and 16.

<sup>94</sup> *Id.*

<sup>95</sup> Supplemental Direct Testimony of Pilar Rodriguez, HCRMA Ex. 1A at 2; Hidalgo County Regional Mobility Authority's Initial Brief at 3.

easements for right-of-way from many other landowners that will be impacted by the remainder of the extent of the line siting along Link 169.

The cooperation between Joint Applicants and the HCRMA towards final routing of the line along a portion of Link 169 is commendable and should be strongly endorsed by the Commission. To that end, Joint Applicants agree with the finding of fact they proposed that addresses this cooperation and proposal in the event a route using Link 169 is chosen by the Commission:

ETT shall construct the project on Link 169 on the alignment as filed in the Joint CCN Application, subject to the following condition: If the HCRMA purchases the land in fee simple along the Link 169 alignment by March 31, 2015, and grants ETT an easement on HCRMA property, then ETT is authorized to locate the transmission line within that easement.<sup>96</sup>

Joint Applicants again are committed to cooperating with HCRMA towards routing the transmission line consistent with the considerations described above. However, Joint Applicants believe that it is necessary to include the foregoing finding of fact in the order, should a route using Link 169 be chosen. Inclusion of the language in the order will ensure that the transmission project continues on a path towards timely completion. If the Commission approves another route such as Route 32, Joint Applicants would continue to work with the HCRMA consistent with the discussions on a route using Link 169.

## *2. Recreational and Park Areas (Reply to Section IV.H of Agreed Parties' Brief)*

The Agreed Parties' Initial Brief touts the Agreed Route for its lack of impact on parks and recreational areas.<sup>97</sup> Not much separates the Agreed Route from Route 32 on this factor. Specifically, like the Agreed Route, Route 32 does not traverse through the length of any parks/recreational areas; nor does it cross over any. Two parks/recreational areas are within 1,000 feet of the right-of-way centerline of the Agreed Route, three less than for Route 32.<sup>98</sup> Thus, this is not a significant distinguishing factor for or against either route, when compared to the other.

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<sup>96</sup> Rebuttal Testimony of Teresa Trotman, JA Ex. 18 at 3-4.

<sup>97</sup> Agreed Parties' Initial Brief at 24 (Dec. 18, 2013).

<sup>98</sup> Application, JA Ex.1 at Attachment 1, Table 4-1.

### *3. Historical and Cultural Resources (Reply to Section IV.I.1 of Agreed Parties' Brief)*

The Agreed Parties' Brief urges that the Agreed Route respects the historical integrity of the study area, considering recorded cultural resource sites, National Register listed sites, and areas of high archeological site potential.<sup>99</sup> Joint Applicants' Initial Brief (under the heading "Historical and Cultural Resources") presents the cultural resources data for both Route 32 and the Agreed Route,<sup>100</sup> and Joint Applicants refer to that discussion.

### *4. Aesthetic Impacts (Land Use)*

The Agreed Parties' Brief argues that the Agreed Route compares favorably on aesthetic values.<sup>101</sup> The criterion used to measure the aesthetic impact is the project's visibility from highways, farm-to-market roads, and parks/recreational areas (using an unobstructed foreground visual zone of one-half mile).<sup>102</sup> The Agreed Route has a slight edge compared to Route 32, as follows:

- Highways—13.5 miles for the Agreed Route versus 18.7 for Route 32.
- Farm-to market roads—30.7 miles for the Agreed Route versus 32.3 for Route 32.
- Parks/recreational areas—8.5 miles for the Agreed Route versus 12.3 for Route 32.<sup>103</sup>

These statistics should not be analyzed in a vacuum. As Joint Applicants' Initial Brief explained, POWER identified no known high quality aesthetic resources, designated views, designated roads or highways, or any wild and scenic rivers or national monuments within the study area. The study area exhibits a moderate degree of aesthetic quality for the region.<sup>104</sup>

Additionally, as noted through the brief, a strict apples-to-apples comparison between Route 32 and the Agreed Route is misleading. Route 32 has greater impacts than the Agreed Route at the moment, but the Agreed Route merely delays a greater impact until a later date.

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<sup>99</sup> Agreed Parties' Initial Brief at 25 (Dec. 18, 2013).

<sup>100</sup> Joint Applicants' Initial Brief at 22-23 (Dec. 18, 2013).

<sup>101</sup> Agreed Parties' Initial Post-Hearing Brief at 25-26 (Dec. 18, 2013).

<sup>102</sup> Application, JA Ex.1 at Attachment 1, Table 4-1, footnote 6.

<sup>103</sup> Application, JA Ex.1 at Attachment 1, Table 4-1 (Route 32); JA Ex. 22 (Agreed Route).

<sup>104</sup> Joint Applicants' Initial Brief at 22-23; Direct Testimony of Rob. R. Reid, JA Ex. 3 at 29.

### *5. Engineering Constraints*

As the Agreed Parties' Initial Brief acknowledges, the routing options for the Commission's consideration are constrained by the highly developed area in the LRGV.<sup>105</sup> Assertions are made that routing the line in the vicinity of the McAllen-Miller International Airport and the Bell Tract in the City of Penitas would cause engineering constraints that seemingly could not be overcome.<sup>106</sup> As the credible evidence reflects, these asserted fears are unfounded. With regards to the Bell Tract, as further addressed below, Joint Applicants routed Links 56, 60, and 344 utilized by Route 32 to minimize as much as reasonably possible the impact of the line on the property proposed for future development by paralleling to the greatest extent the eastern boundary of the tract. There is no credible evidence that Joint Applicants would encounter the asserted engineering constraints on the Bell tract, much less constraints that would cause any significant increase in costs or delay of the line's construction.

With regards to the McAllen-Miller International Airport, and as also further addressed below, Joint Applicants question whether the purported airport expansion will occur based on the evidence presented. Nevertheless, should the expansion occur, Joint Applicants do not anticipate encountering engineering constraints that will rise to the level of threatening the ability of the Project to be constructed in the area of asserted concern. As Joint Applicants have provided in evidence, routing considerations such as undergrounding a short portion of an existing distribution line or a short portion of proposed transmission line or utilizing a special structure configuration at their crossing could be accomplished to avoid the structure height concerns that the City of McAllen raises.

### *6. Community Values*

Joint Applicants, the Commission Staff, and the intervenors all recognize the importance of community values as a factor to be weighed by the Commission in its ultimate decision in choosing a route.<sup>107</sup> The opinions of the community at large should be given significant consideration. Joint Applicants seriously took such opinions into consideration when developing

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<sup>105</sup> Agreed Parties' Initial Brief at 17 (Dec. 18, 2013).

<sup>106</sup> Agreed Parties' Initial Brief at 28-30 (Dec. 18, 2013).

<sup>107</sup> Post-Hearing Brief of Mil Encinos Property Ltd and G.E. Bell Properties Ltd at 3-6 (Dec. 18, 2013); City of McAllen's Initial Post-Hearing Brief at 11-14 (Dec. 18, 2013); Initial Brief of the City of San Juan, Texas at 4 (Dec. 18, 2013); Initial Post-Hearing Brief of EIA/Dougherty/Verde Parties at 11 (Dec. 18, 2013); Commission Staff's Initial Brief at 9 (Dec. 18, 2013).

their alternative routing links and routes. This consideration included and involved holding several public open houses across the LRGV, including an additional, subsequent open house in Edinburg to present additional routing links after receiving initial landowner input from an earlier open house.<sup>108</sup> Such evaluation, while heavily considering routing impacts to habitable structures, also looked at other factors including but not limited to such impacts on land use, aesthetics, recreation, transportation, and socioeconomics.<sup>109</sup>

Based on information gathered in preparation of the CCN application, Joint Applicants made routing link modifications to the greatest extent practicable to address expressed concerns with preliminary routing links, particularly when more than one landowner shared the same route concern or would be directly affected by an adjustment.<sup>110</sup> In doing so, Joint Applicants were conscious of the impacts that their routing alternatives could have on communities in the densely populated and developed areas across the LRGV. A testament to Joint Applicants' efforts in attempting to minimize the impacts of their line routing on the community is the development of Route 32, which while longer than the Agreed Route and Route 1S, has many fewer habitable structures within 500 of its centerline than the other two routes. Furthermore, Joint Applicants continue to believe that the selection of Route 32 will provide less impact on the community by easing routing impacts on landowners by siting the 345 kV line as close as practicable to the South McAllen Substation before the continually growing area around South McAllen develops further.

#### *7. Cost (and Length)*

In the Agreed Parties' Initial Brief, they argue that the Agreed Route and Route 1S, like all of the supplemental routes, are shorter than Route 32 and the Agreed Route is more that \$40 million less expensive than Route 32.<sup>111</sup> While these factors on their face appear to be factually correct, the Agreed Parties do not account for the offset of cost savings in routing the transmission line through the Routing Circle now to interconnect to the South McAllen Substation, as discussed above. The interconnection can occur sooner, as Joint Applicants propose with Route 32 through the Routing Circle, or it can be deferred until later, with a

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<sup>108</sup> Direct Testimony of Teresa Trotman, JA. Ex. 9 at 8.

<sup>109</sup> Direct Testimony of Rob R. Reid, JA Ex. 4 at 35-36.

<sup>110</sup> Direct Testimony of Teresa B. Trotman, JA Ex. 9 at 11.

<sup>111</sup> Agreed Parties' Initial Brief at 14 (Dec. 18, 2013).

supplemental route like the Agreed Route or Route 1S.<sup>112</sup> What the Agreed Parties ignore is that the costs to interconnect to the South McAllen Substation will need to eventually be incurred. Thus, any cost savings by using a supplemental route like the Agreed Route or Route 1S are more accurately described as “cost deferrals.”<sup>113</sup>

As Joint Applicants demonstrated, the Agreed Route and Route 1S are roughly eleven miles away from the South McAllen Substation.<sup>114</sup> Taking into consideration routing to the South McAllen Substation that would be deferred if either of these two routes is chosen, the cost of additional transmission that would need to be ultimately build would be roughly \$51.68 million.<sup>115</sup> Any purported cost savings of the Agreed Route are eliminated and the differential between Route 32 and Route 1S is significantly narrowed.

The primary distinction between the routes that pass through the Routing Circle and the supplemental routes such as the Agreed Route and 1S is not whether these routes are superior, it is whether the infrastructure necessary for the future South McAllen interconnection is built now, when the land is relatively undeveloped, or later, when the area is more heavily populated and more heavily constrained.<sup>116</sup> Routing in the area of South McAllen will only become more difficult in the future (thereby causing greater impacts). Additionally, a South McAllen “tap” might be needed almost immediately, and as a result, the Agreed Route would not even *delay* these impacts, it would merely divert them into another CCN proceeding, where many of the same landowners may ultimately be affected. For this reason, Joint Applicants continue to believe that the routes that pass through the Routing Circle are the better long-term transmission planning solution, have the least impact on landowners, and are the best value,<sup>117</sup> as more fully set forth in their initial brief.<sup>118</sup>

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<sup>112</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 6-7.

<sup>113</sup> *Id.* at 6.

<sup>114</sup> *Id.* at 7.

<sup>115</sup> *Id.* at 6-7.

<sup>116</sup> *Id.* at 7.

<sup>117</sup> *Id.*

<sup>118</sup> Joint Applicants’ Initial Brief at 11-13 (Dec. 18, 2013).

*8. Use of Existing Compatible Right-of-Way and Apparent Property Lines (Reply to Sections IV.F and G of Agreed Parties' Brief)*

The Agreed Parties' Initial Brief discusses how the Agreed Route compares to other routes in utilizing/paralleling compatible ROW and paralleling property lines and other natural features.<sup>119</sup> All told, both the Agreed Route and Route 32 get high marks for these factors, with the Agreed Route having a slight advantage. For Route 32, the combined length of ROW parallel to existing transmission and other existing ROW, apparent property lines, and other natural or cultural features is 74%. It is 80% for the Agreed Route.<sup>120</sup> However, it should be noted that the Agreed Route and Route 32 are not directly comparable. As discussed throughout this brief, the Agreed Route is not within the Routing Circle and, as a result, the impacts of a future transmission line connecting the Project to the South McAllen Substation will be greater because the line "tap" would be further away.

*C. Specific Parties' Objections*

Several intervenors argue that Route 32 or other routes utilizing links for which there is no agreement would also negatively impact the use of their properties more so than those utilized by the Agreed Route. Some, such as EIA Properties, Ltd, Stag Holdings, Ltd (EIA/Stag) Frost Bank and Ben F. Vaughan, III, as Co-Trustees of the Genevieve T. Dougherty Trust #2, Frost Bank as Trustee of the Melissa Dougherty Trust, and Wells Fargo Bank, N.A. as Trustee of the Kevin Dougherty Trust (Dougherty Trusts) and Verde Mission, LP and Verde 5801 George McVay, LP (Verde) (collectively EIA/Stag, Dougherty/Verde Properties), argue that Route 32 or other routing links not utilized by the Agreed Route will negatively impact their productive agricultural farming operations through either paralleling or crossings.<sup>121</sup> d'Hemecourt, Progreso Co-Op Gin, Inc. (Progreso), Mil Encinos and G.E. Bell Properties, LTD (G.E. Bell) make similar claims of negative impacts to their properties.

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<sup>119</sup> Agreed Parties' Initial Brief at 23-24 (Dec. 18, 2013).

<sup>120</sup> See Joint Applicants' Initial Brief at 24-25 (Dec. 18, 2013); and Application, JA Ex. 1 at Attachment 1, Table 4-1 (Route 32), JA Ex. 22 (Agreed Route).

<sup>121</sup> Initial Post-Hearing Brief of EIA/Stag, Dougherty/Verde Parties at 4, 7, 9 (Dec. 18, 2013).

### *1. EIA/Stag Objections*

EIA/Stag asserts<sup>122</sup> its properties on both eastern and western routes have been farmed for years.<sup>123</sup> Notwithstanding, Joint Applicants took all reasonable measures to minimize the impact of its routing alternatives through property paralleling where feasible on EIA/Stag properties, including the routing of Route 32. Furthermore, only a small amount of land around the transmission structures will be lost to grazing or cultivation.<sup>124</sup> ETT's and Sharyland's monopole structures are expected to be spaced approximately 750-850 feet apart and to occupy an area approximately ten feet in diameter.<sup>125</sup> Joint Applicants commit to working with landowners such as EIA/Stag properties to make any further minor routing modifications, including paralleling, where reasonable, to minimize the line's impact to farming operations on properties.<sup>126</sup> Notwithstanding such commitment to working with landowners, Joint Applicants cannot agree to the inclusion of EIA/Stag's proposed finding of fact presented at page 6 of their Initial Post-Hearing Brief. The language proposes to address certain individual rights and protections relative to a proposed easement that go well beyond what the Commission typically includes in transmission line CCN orders. Joint Applicants object to the inclusion of this proposed finding of fact as such issues are typically addressed by the utility and landowners during the negotiation of an easement for right-of-way and not through the grant of a CCN.

### *2. Dougherty Trust Objections*

Like EIA/Stag, the Dougherty Trusts Properties assert that Link 54 used by Route 32 would also impede agricultural use of its property and would make it difficult to conduct aerial crop spraying of such property.<sup>127</sup> In particular, Dougherty Trusts Properties argue that the location of the proposed line, its property lines and Highway 2221 would restrict the ability of the plane to fully aerielly spray the property, which would reduce crop yield.<sup>128</sup> However, the

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<sup>122</sup> Verde similarly argues that certain proposed links would negatively impact its farming operations, although no property owned by Verde is impacted by Route 32. See Initial Post-Hearing Brief of EIA/Stag, Dougherty/Verde Parties at 9 (Dec. 18, 2013).

<sup>123</sup> Initial Post-Hearing Brief of EIA/Stag, Dougherty/Verde Parties at 4-7 (Dec. 18, 2013).

<sup>124</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 4-5.

<sup>125</sup> *Id.*

<sup>126</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 9.

<sup>127</sup> Initial Post-Hearing Brief of EIA/Stag, Dougherty/Verde Parties at 7 (Dec. 18, 2013).

<sup>128</sup> *Id.* at 8.

evidence does not support how a road and property boundary together with a transmission line would cause such an impediment. Rather, as the evidence demonstrates, in most cases aerial application and crop dusting can still be applied with a transmission line on the property.<sup>129</sup> If there are areas that can no longer be accessed near the transmission line, they can still be managed with on the ground mechanical machines.<sup>130</sup>

### *3. Property Development*

EIA/Stag, Verde, d'Hemecourt, City of San Juan, Mil Encinos and G.E. Bell all make claims that Route 32 or links used by a route other than the Agreed Route will negatively impact future potential development on their respective properties. EIA/Stag and Verde argue that although their properties are and have been farmed for years, they are better suited to residential and commercial development.<sup>131</sup> d'Hemecourt argues that a route chosen that uses Link 196b will have a detrimental effect on residential and commercial development in the Progreso area because the link runs entirely along Highway 281 through Progreso and further asserts that the properties along the highway are among the most valuable in that area.<sup>132</sup> The City of San Juan also argues that the use of Link 166 in an approved route will remove a substantial amount of remaining land available for residential development in that city.<sup>133</sup> Finally, G.E. Bell argues that Links 56, 60, and 344 utilized by Route 32 will significantly disrupt development on its property.<sup>134</sup>

These arguments involve claims of future or planned development being negatively impacted by Route 32 or links on routes other than the Agreed Route. However, the Commission has consistently rejected consideration of future land use in selecting a route in CCN cases. For example, in Docket No. 29684, the Commission held that "future developments and plans are too indefinite as to where or how potential routing areas will be affected and, as

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<sup>129</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 6.

<sup>130</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 5.

<sup>131</sup> Initial Post-Hearing Brief of EIA/Stag, Dougherty/Verde Parties at 5, 7, 10 (Dec. 18, 2013).

<sup>132</sup> d'Hemecourt Properties, Inc.'s Initial Brief on the Merits at 6-7 (Dec. 18, 2013).

<sup>133</sup> Initial Brief of the City of San Juan at 7-8 (Dec. 18, 2013).

<sup>134</sup> Post-Hearing Brief of Mil Encinos Property LTD and G.E. Bell Properties LTD at 4-8 (Dec. 18, 2013).

such, are irrelevant to this Commission's decision."<sup>135</sup> In Docket No. 11014, the Commission held that future land use is not an appropriate issue for a CCN proceeding and is more appropriate in condemnation proceedings.<sup>136</sup>

There is a common policy consideration to these parties' asserted development proposals: The Commission must evaluate both the uncertainty of the development and the difficulty of making routing decisions based on the presumed location, economics, and community values associated with the proposed development. While Joint Applicants are willing to plan their transmission line route in a way that mitigates the potential impact on the site of proposed development, it's uncertain at this point whether these future developments will actually be constructed or constructed as planned. These considerations are especially true for the G.E. Bell development on the Bell Tract in the vicinity of the City of Penitas and the City of McAllen's proposed airport expansion (which is discussed in detail below).

#### 4. G.E. Bell's Objections

G.E. Bell argues that Links 56, 60, and 344 included in Route 32 routed on the Bell tract would have "devastating" effects on the housing and retail amenities plans.<sup>137</sup> However, prior to the filing of its CCN and following meeting with Bell brothers at the open houses, Joint Applicants made routing modifications in effort to accommodate the impacts of a line using the links on the property from input received.<sup>138</sup> As G.E. Bell's evidence shows, and as they acknowledge, Link 56 was moved to the Bell tract's eastern property boundary in order to minimize the impact on the property.<sup>139</sup> Link 56 runs from north to south along the length of the eastern boundary of the Bell tract, while Link 60 crosses a portion of the southeastern corner of

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<sup>135</sup> *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission line in Kendall and Bexar Counties*, Docket No. 29684, Order on Rehearing at 4 (Mar. 22, 2006).

<sup>136</sup> *Application of Pedernales Electric Cooperative, Inc. to Amend Certificate of Convenience and Necessity for Proposed Transmission line Within Hayes County*, Docket No. 11014, 21 P.U.C. Bull. 617, 666 and FoF No. 113 (Dec. 22, 1995).

<sup>137</sup> Post-Hearing Brief of Mil Encinos Property LTD and G.E. Bell Properties LTD at 4-8 (Dec. 18, 2013).

<sup>138</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 14; Joint Applicants Response to Mil Encinos' 1<sup>st</sup> Request for Information, Mil Encinos Ex. 1, Response to RFI No. 1-9.

<sup>139</sup> Post-Hearing Brief of Mil Encinos Property LTD and G.E. Bell Properties LTD at 7 (Dec. 18, 2013); see also Direct Testimony of John Womack, Mil Encinos Ex. 2 at Exhibit M.

the property and as it continues to the south across U.S. Highway 83.<sup>140</sup> The placement of these links in the open fields along the apparent property lines of a proposed future development was a better alternative than seeking to route the links to the east of the Bell tract on an active gravel mining site with the numerous risks to the transmission line operation from the existing mining operation and its use of heavy equipment by its mine operator on the property.<sup>141</sup> Further, constructing the line in the area east of the Bell tract could require that the line be relocated in the future if the mining operation continues to expand to the west and/or potentially affects structure foundation integrity as the mining operation develops next to the structures.<sup>142</sup>

Additionally, Joint Applicants routing of these links was also affected by the fact that there are several established, existing residential developments and other commercial/industrial developments to the west of the proposed future development that also limited the routing opportunities in the proposed future development area without creating an additional impact to these existing facilities. Link 344 was also routed along apparent property lines and an existing transmission facility and in the case where it paralleled the existing transmission line it was located to the west of the existing line, which already paralleled an existing residential development. Link 50 was routed to primarily parallel an existing dirt road and a group of planted trees that appeared to be a possible location for a future road. Therefore, each of these Links 56, 60 and 344 follows existing transmission lines, roads, and/or apparent property boundaries.<sup>143</sup>

Thus, while G.E Bell argues that little consideration was given to the community values of their planned development, they ignore the fact that Joint Applicants properly considered *existing* residential and commercial development and *existing* gravel mining operations in the area to the west and east of and adjoining the Bell tract and the value of those respective communities in the decision to propose routing Links 55, 56, 60 and 344 as filed, while taking into consideration the reduction of potential impact to a potential future development.<sup>144</sup> At the

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<sup>140</sup> Direct Testimony of John Womack, Mil Encinos Ex. 2 at Exhibits M through R, which depict the routing links relative to the Bell tract.

<sup>141</sup> Joint Applicants Response to Mil Encinos' 1st Request for Information, Mil Encinos Ex. 1, Responses to RFI Nos. 1-2 & 1-5.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at Response to RFI No. 1-3.

<sup>144</sup> Hidalgo County Property Boundary Map, JA Ex. 1, Attachment 9a – Hidalgo Sheet-11. (This property boundary map sheet from Joint Application provides an aerial view of Links 55, 56, 60, and 344. Exhibit M

time of route development, Joint Applicants believed they adequately and reasonably considered these potential impacts to the existing developments and from the mining operations in relation to the existing vacant fields and potential future development of the Bell tract.

Also, as Joint Applicants' evidence shows, it is common in Texas that commercial and residential developments include transmission lines in their planning process and that developments such as that planned by G.E. Bell can and do occur around transmission lines.<sup>145</sup> Good examples in the Austin area include The Domain, Barton Creek, Lost Creek, and Steiner Ranch, as well as the multiple transmission lines that exist in the greater McAllen area that includes the very area near the Bell tract.<sup>146</sup> As with issues of concern raised by other intervenors, Joint Applicants commit to work with G.E. Bell towards minor routing adjustments that can feasibly further reduce the impact to the property any more than has already been implemented to the existing links at issue.<sup>147</sup>

##### *5. City of McAllen Objections*

With regards to the City of McAllen (McAllen)'s aspirations to expand its airport, the evidence does not support the certainty of the airport's expansion plans. In addition, McAllen paints with a too-broad brush and fails to zero in on its own witness's specific findings.

McAllen's 14-page Initial Brief on the airport discusses numerous subjects from several perspectives, relying on all five of its witnesses.<sup>148</sup> What it does not discuss, however, is the imminence, feasibility, or probability of the airport expansion using McAllen's own measuring stick. Joint Applicant witness Barrett Thomas undertook exactly that type of analysis. He concluded, correctly, that the expansion plans are speculative based on information supplied from the City of McAllen's and its own expansion report providing guidance on when expansion would be needed.<sup>149</sup>

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attached to the Direct Testimony of John Womack, Mil Encinos Ex. 2, overlays the Bell tract on a portion of Attachment 9a - Hidalgo Sheet-11 depicting the links. Attachment 9a more clearly shows the existing residential development and the active mining gravel mine to the west and the east of the Bell tract, respectively. Please note that the pertinent portions of Attachment 9a inadvertently label Link 55 as Link 344 and Link 344 as Link 346.)

<sup>145</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 14.

<sup>146</sup> *Id.*

<sup>147</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 9.

<sup>148</sup> In a second round of briefing on the subject, McAllen also addressed the airport issue on pages 28-29 of the Agreed Parties' Brief.

<sup>149</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex. 19 at 2-4, 8.

According to McAllen's own airport master plan produced in 2005, the trigger for expansion is the airport's annual operations (i.e., the sum total of take offs and landings).<sup>150</sup> Specifically, the airport's current capacity is approximately 163,000 operations. When the airport "reaches 60 percent capacity or 98,000 operations" then the future parallel runway planning "should begin."<sup>151</sup> The past ten years of experience show, however, that operations would have to increase by roughly 50 percent to trigger such planning. History shows no trend suggesting that any such increase will materialize.

Annual operations were 64,553 and 62,968 in 2003 and 2004, respectively, and have roughly hovered around these numbers since then.<sup>152</sup> In 2008 and 2009, they were 56,399 and 53,077, respectively.<sup>153</sup> Total operations were 65,796 for 2011 and 60,902 for 2012.<sup>154</sup> In sum, over the past 10 years, operations have not breached the 70,000 level, and they exhibit no trend suggesting that 98,000 will soon be achieved.

McAllen implies that whether or not it ever expands the airport is irrelevant because the Federal Aviation Administration (FAA) restrictions about height and proximity of transmission structures exist today through the FAA's having already approved the expansion plan.<sup>155</sup> Missing from these arguments, however, is a careful, discriminating analysis of what precise areas, if any, pose a challenge. Also, missing from this information is no such FAA approval being submitted as evidence in this proceeding by the City of McAllen. Mr. Thomas offered such an analysis using information provided by City of McAllen, which was admitted into evidence and from its witness Bruce Beard in Attachment D to Mr. Beard's direct testimony.<sup>156</sup>

In particular, Mr. Beard found that only Link 118a would be a concern, as follows:

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<sup>150</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19, McAllen's RFI response in Ex. BAT-RT-3 (definition of operations).

<sup>151</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19 at 3, and Ex. BAT-RT-2 at 2, the second and third bullets at the bottom of the page.(emphasis added)

<sup>152</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19, in Ex. BAT-RT-4 at 2 and 3. Ex. BAT-RT-4 is a McAllen RFI response. For the years 2003-2005, total operations are shown on pages 2-4 in the last column.

<sup>153</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19, in Ex. BAT-RT-4 at 8. In Ex. BAT-RT-4, airport operations for 2006 -2010 are shown on pages 6-9 in the 4<sup>th</sup> column in the top table, titled "Total."

<sup>154</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19, in Ex. BAT-RT-4 at 9 and 10. In Ex. BAT-RT-4, operations in 2011-2013 are on pages 9-11, in the last column of the row titled "Airport Operations, Cumulative YTD."

<sup>155</sup> City of McAllen's Initial Brief at 5-6, 8 (Dec. 18, 2013).

<sup>156</sup> Direct Testimony of Bruce Beard, City of McAllen Ex. 1, Attachment D on pages 18-20.

- For current runway 31R, both as it exists today and as it might be expanded to 10,000 feet, Mr. Beard found that a structure height of 145 feet should present no problems, though a height of 165 feet could be problematic.
- For the possible addition of a new parallel runway, Mr. Beard found that a structure height of 145 feet to the northwest of the midpoint of Link 118a could be problematic, and that the structure height must be reduced to 95 feet to solve the problem.<sup>157</sup>

Mr. Thomas explained that only one location on Link 118a (on the southeastern side of its midpoint) *might* require a structure to be taller than 145 feet, which is at the crossing of CR 2061 where an existing distribution line parallels the road. Yet even in that situation, alternatives could be considered—to place an existing distribution line underground, to use a special type of structure configuration, or to place the 345 kV transmission line underground at this location. In any event, the FAA would be notified for Link 118a structures and at that time the FAA would determine what limitations may exist and the FAA and ETT would determine the steps necessary to take to be in compliance.<sup>158</sup>

Mr. Thomas goes on to say that for two locations on Link 118a, it may be difficult to reduce the height to 95 feet if the ultimate build out to add the parallel airstrip ever occurred. One of these is southeast of the midpoint of Link 118a which was discussed above, and the other is where the line would cross over the intersection of Whalen Road and S. McColl Road located to the northwest of the midpoint of Link 118a.<sup>159</sup> As explained above, if this build out did occur then ETT may need to consider a section in this location to be constructed underground or with a special structure configuration on a considerably expanded easement width.

#### 6. *John Randall Objections*

Mr. Randall opposes the use of Link 287 on several grounds,<sup>160</sup> including that it crosses the U.S. Fish and Wildlife Service (USFWS) National Wildlife Refuge (NWR) lands.<sup>161</sup> Link

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<sup>157</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19 at 5.

<sup>158</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19 at 6.

<sup>159</sup> Rebuttal Testimony of Barrett A. Thomas, JA Ex 19 at 7.

<sup>160</sup> See Initial Brief of John R. Randall, Jr. (Dec. 18, 2013).

<sup>161</sup> *Id.* at 2-5.

287 is not part of the Route 32,<sup>162</sup> and Joint Applicants agree with Mr. Reid's recommendation to select a route, like Route 32,<sup>163</sup> that does not cross any portion of the USFWS NWR.<sup>164</sup> Though Joint Applicants believe that all routes are viable, they nonetheless acknowledge that the most prudent choice would be to avoid to the extent possible problematic federal rights-of-way (excluding potentially IBWC, which cannot be routed around entirely and for which permits can be obtained).<sup>165</sup> In addition, Joint Applicants support adopting Mr. Hooten's proposed changes to Route 1S (adjusting it to the south using Links 289 and 291),<sup>166</sup> if that route is selected.

#### *7. Jose C. Rodriguez Objections*

Mr. Rodriguez raises two sets of issues. First, he alleges disparate impacts to his property resulting from Link 278<sup>167</sup> and Link 279.<sup>168</sup> Second, he alleges problems with notice and service.<sup>169</sup> As for the first issue, Route 32 does not include either Link 278 nor 279,<sup>170</sup> and Joint Applicants will work with Mr. Rodriguez to minimize any impacts to his cattle ranching or real estate development plans in the event the Commission selects a route that crosses his property. As for the second issue, Mr. Rodriguez received notice and received service (at least from Joint Applicants). Joint Applicants provided proof of notice on July 30, 2013,<sup>171</sup> and Mr. Rodriguez's July 26, 2013 intervention in this proceeding should resolve any concerns about whether he received notice. Furthermore, Joint Applicants properly served Mr. Rodriguez in accordance with Orders No. 4 and 5 (and he even references Joint Applicants' brief in his brief,<sup>172</sup> showing that he did receive service of at least that document).

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<sup>162</sup> Application, JA Ex. 1, Attachment 1 at Table 3-1.

<sup>163</sup> Application, JA Ex. 1, Attachment 1 at Table 4-1.

<sup>164</sup> Tr. at 184 (Dec. 4, 2013).

<sup>165</sup> Tr. at 152-53 (Dec. 4, 2013); Tr. at 184 (Dec. 4, 2013).

<sup>166</sup> Tr. at 195 (Dec. 4, 2013).

<sup>167</sup> Brief of Jose C. Rodriguez at 3 (Dec. 27, 2013).

<sup>168</sup> Brief of Jose C. Rodriguez at 2 (Dec. 27, 2013).

<sup>169</sup> Brief of Jose C. Rodriguez at 1, 3 (Dec. 27, 2013).

<sup>170</sup> Application, Attachment 1 at Table 3-1, JA Ex. 1.

<sup>171</sup> Joint Applicants' Proof of Notice (Jul. 30, 2013).

<sup>172</sup> Brief of Jose C. Rodriguez at 3 (Dec. 27, 2013).

#### 8. *Progreso Co-Op Gin, Inc. Objections*

Progreso argues in its Initial Brief that Link 196b, which is utilized in Route 32, cuts across the gin's property and directly over gin structures and work areas.<sup>173</sup> According to Progreso, the line as routed would interfere with the gin's operations and cause undue hardship on the local cotton farmers and, as such, does not adhere to community values, land use and prudent avoidance.<sup>174</sup> Based on a review of aerial photography, the impacts to the gin, if any, would be slight. Link 196b abuts the northernmost edge of the property, parallel to the road, and the only structure that would need to be relocated appears to be a small shed.<sup>175</sup> Otherwise, normal operations would be able to continue despite the transmission line.<sup>176</sup> Joint Applicants understand the concern and will work with Progreso, should a route utilizing link 196b be chosen, to resolve any concerns through minor route modifications where reasonable.<sup>177</sup>

#### 9. *Irrigation District Objections*

United Irrigation District and Hidalgo County Irrigation District, in opposition to Route 32 and other western routes, raised concerns in their Initial Brief that those routes could negatively impact their operations and their essential mission of providing irrigation water for agricultural uses.<sup>178</sup> They argue that the impact of Route 32 on their facilities could interrupt their operations and their ability to provide safe and reliable water service seriously impaired.<sup>179</sup> Both irrigation districts assert that their maintenance operations could be impacted by the overhead transmission line that would require sufficient clearances so that the proper and safe operation of their maintenance equipment is not impacted.<sup>180</sup>

As demonstrated by their agreements with Hidalgo County Irrigation District Nos. 1 and 5, Joint Applicants are committed to use best management practices to prevent interference with the operation and maintenance of irrigation facilities and have been working with and will

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<sup>173</sup> Progreso Co-Op Gin, Inc.'s Initial Brief at 2 (Dec. 18, 2013).

<sup>174</sup> *Id.*

<sup>175</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 10.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Initial Brief of United Irrigation District and Hidalgo County Irrigation District No. 16 at 2-5 (Dec. 18, 2013).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

continue to work with the various irrigation districts to ensure that the Project does not unreasonably interfere with the operation and maintenance of the irrigation districts' facilities.<sup>181</sup> Joint Applicants agree to use their best efforts not to encroach on any irrigation district property (either in fee or easement) containing a canal and/or pipeline. In addition, Joint Applicants agree to maximize the height of the conductors where the transmission line crosses a canal and/or pipeline, to the extent practicable, by either modifying structure design or placement near to the edge of canals or pipeline easements crossed. Joint Applicants will work with irrigation district landowners to make minor route modifications or to adjust pole placement to avoid such irrigations facilities where reasonable or, in some instances, may relocate the facilities if determined necessary. Joint Applicants will also work to span irrigation systems rather than placing transmission structures in their path.<sup>182</sup>

#### *10. d'Hemecourt Objections*

As further addressed above, d'Hemecourt opposes any route, including Route 32, that uses Link 196b because the link, taken in isolation, is not superior to Links 193c and 194. It supports the Agreed Route. As previously addressed, d'Hemecourt's analysis is flawed in that simple comparison of routing links in isolation as opposed to comparing routes from end point to endpoint does not present a full analysis of the merits of a proposed route. d'Hemecourt's further suggests if Route 32 is chosen that Links 351a, 351b, 193c, 194, 201, 207, 208 and 209 should be substituted for Links 196b, 200 and 213 used in the Route 32.<sup>183</sup> However, there is no evidence in the record for the Commission to determine how what would constitute a new variation of Route 32 using the suggested links would compare to Routes 32, the Agreed Route, and Route 1S, much less all other proposed routes. Accordingly, Joint Applicants cannot take a position on whether d'Hemecourt's modified Route 32 should be a routing option for the Commission's consideration.

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<sup>181</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 11-12; Rebuttal Testimony of Teresa B. Trotman, JA Ex. 18 at 4-5; Joint Stipulation of Agreed and Supporting Parties, Rhodes Alliance Ex. 14 at 9-10.

<sup>182</sup> Rebuttal Testimony of Mark E. Caskey, JA Ex. 16 at 11-12; Rebuttal Testimony of Teresa B. Trotman, JA Ex. 18 at 4-5.

<sup>183</sup> d'Hemecourt Properties, Inc. Initial Brief at 9.

**IV. PRELIMINARY ORDER ISSUE NO. 7: Texas Parks and Wildlife Department (TPWD)'s concerns can be mitigated by the adoption of mitigation measures.**

TPWD urges three main points.<sup>184</sup> Joint Applicants addressed each of these points in their Initial Brief, as follows.

First, for route selection, TWPD urges Route 9S or, if the project is routed in proximity to the south McAllen Substation, Route 29. Joint Applicants' Initial Brief explains why neither route should be selected.<sup>185</sup> Links developed for the routes avoid habitable structures and state and federal lands, resulting in links that are located *between* TPWD tracts instead of *on* them. Routes 29 and 9S would each result in more than 1,000 habitable structures being located within 500 feet of the centerline, with five such structures possibly being relocated or removed.<sup>186</sup> Routes 9S and 29 would have a far greater impact on habitable structures compared to other routes.<sup>187</sup> Additionally, Routes 9S and 29 contain Link 287, which could be problematic from a permitting perspective.<sup>188</sup>

Second, TWPD affirms that bird flight diverters should be used to mark links east of the US 77 highway, if the Agreed Route is selected (which TPWD does not oppose). Page 31 of Joint Applicants' Initial Brief presents a better, more refined approach. After route selection, Joint Applicants will determine whether any high bird use areas occur along the route and consult with the United States Fish & Wildlife Service about any necessary line markers.<sup>189</sup>

Last, TPWD requests that Mr. Hooten's recommendations and those in the TPWD's September 13, 2013 letter be incorporated wholesale into the final order.<sup>190</sup> Pages 28-32 of Joint Applicants' Initial Brief address these many recommendations and what should be done with them. The most direct and practical approach to this subject is to follow what both Staff and

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<sup>184</sup> TPWD's Initial Brief at 3 (Dec. 18, 2013).

<sup>185</sup> Joint Applicants' Initial Brief at 29-30 (Dec. 18, 2013).

<sup>186</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 17, 25-26.

<sup>187</sup> Rebuttal Testimony of Rob R. Reid, JA Ex. 17 at 16.

<sup>188</sup> Tr. at 152-53 (Dec. 4, 2013); Tr. at 184 (Dec. 4, 2013).

<sup>189</sup> *Id.* at 22-23.

<sup>190</sup> TPWD's Initial Brief at 3 (Dec. 18, 2013). The TPWD's September 13, 2013 letter is not in the record, although Mr. Reid refers to it in his rebuttal testimony. Apart from discussions on specific links and routes, at the hearing Mr. Hooten's only recommendation was to use bird flight diverters on the Agreed Route, Tr. at 196-197, a point that is addressed above.

Joint Applicants propose for ordering paragraph language.<sup>191</sup> Specifically, the final order should include ordering paragraphs 1 through 8 on pages 17-18 of Staff's Initial Brief, with the insertion of the additional language to Staff's ordering paragraph 5 quoted on the bottom of page 31 and the top of page 32 of Joint Applicants' Initial Brief. Staff's proposed ordering paragraphs 1, 7 and 8 are not relevant to the TPWD's recommendations but are acceptable and routinely included in transmission line CCN orders.

## V. CONCLUSION

Given ERCOT's recommendation and the more recent information that has become available, it would be prudent to consider the potential future connection of this Project to the South McAllen Substation in selecting a route in this proceeding. The evidence shows that preparation for the construction of a "tap" between the Project and the South McAllen Substation will likely begin as soon as this Project is completed. Because of that, Joint Applicants suggest that this Project can and should be routed to minimize the impact of that impending "tap" on local landowners (including potentially many of the same landowners involved in this proceeding). This minimization can be accomplished by routing along the southern and western edge of the City of McAllen. Doing so would not only decrease the number of habitable structures affected by both this Project and the South McAllen "tap," it would also result in long term cost-savings when compared to the Agreed Route. Therefore, Joint Applicants believe that Route 32 is the best route in this proceeding when all the facts are taken into account.

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<sup>191</sup> See Joint Applicants' Initial Brief at 31-32 (Dec. 18, 2013); Staff's Initial Brief at 17-18 (Dec. 18, 2013).

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January 8, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on all parties of record this 8th day of January, 2014 via the Commission's filing interchange, e-mail, or first-class mail in accordance with Order No. 4.

Sarah Merrick  
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