



Control Number: 41606



Item Number: 1289

Addendum StartPage: 0

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

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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, TEXAS**

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**PUBLIC UTILITY COMMISSION OF
TEXAS**

PETITIONER'S MOTION FOR REHEARING

COMES NOW Jose R. Rodriguez ("Mr. Rodriguez" or "Petitioner") and hereby files his Motion for Rehearing of the Commission's April 10, 2014 Order, and would respectfully show the following:

BACKGROUND FACTS

1. Mr. Rodriguez is the owner of property in Cameron County, Texas, which is located along the proposed route of the proposed transmission line which is the subject of this proceeding. Mr. Rodriguez properly intervened in the docket on July 29, 2013, indicating that he both owns property that would be crossed by one or more of the proposed routes, and that he owns property with a habitable structure near one or more of the proposed routes.
2. Mr. Rodriguez's intervention was allowed and he filed a statement of position on October 24, 2013, as required to maintain his intervenor status.
3. On September 13, 2013 Mr. Rodriguez filed a Motion For A Change of Venue to The Rio Grande Valley and a Motion To Use Traditional Service For Individual Intervenor.

4. On September 24, 2013 the SOAH judge denied the motion for change of venue and granted the motion for traditional service.

5. On December 27, 2013 Mr. Rodriguez filed a brief in support of his position.

6. On April 10, 2014 the Commission issued a final order in this proceeding (Attachment A). The Final route ordered includes links 278, 279 and 362, which cross or affect Mr. Rodriguez's property.

ARGUMENT

A. POINT OF ERROR NO. 1: TRADITIONAL SERVICE WAS NOT PROVIDED.

7. Although his motion requiring traditional regular mail service was granted on September 24, 2013, Mr. Rodriguez did not receive service of at least the following documents: October 21 - Order addressing the route adequacy hearing; October 28 - amended application providing notice of the 10 supplemental routes; December 2 - Joint Stipulation of Agreed and Supporting Parties. Because traditional service was ordered but not provided, Mr. Rodriguez was prejudiced in his ability to effectively represent himself in this proceeding. Mr. Rodriguez was unable to provide the Commission with evidence in support of his position, or in opposition to the Stipulation of which he was not aware. Therefore, Mr. Rodriguez respectfully requests that he be granted a rehearing in this matter where the undersigned will be present and provide the Commission with this evidence.

B. POINT OF ERROR NO. 2: CHANGE OF VENUE WAS WRONGFULLY DENIED.

8. Had Mr. Rodriguez been allowed to present his case in the Rio Grande Valley, he and many of the other approximately 485 original intervenors would have had a better

opportunity to present evidence and participate in this proceeding. The financial hardship, inconvenience, and expense to the hundreds of affected landowners of traveling to Austin far outweigh any inconvenience to the judges and staff involved. Therefore, Mr. Rodriguez respectfully requests that he be granted a rehearing in this matter in the Rio Grande Valley, where he will be present and provide the Commission with this evidence.

C. POINT OF ERROR NO. 3: NO NOTICE OF SUPPLEMENTAL ROUTES WAS PROVIDED.

9. Given that the actual route chosen was one of the ten supplemental routes, see Finding of Fact 17, and that Mr. Rodriguez never received notice of any of these 10 supplemental routes, it was not possible for him to adequately present evidence opposing proposed routes which he was not aware existed. Additional notice of the 10 supplemental routes should have been provided to allow parties an adequate opportunity to contest these routes. The failure to require such additional notice prejudices the ability of parties to properly present evidence regarding the viability of these new supplemental routes. A new hearing should be provided to allow for presentation of such evidence.

D. POINT OF ERROR NO. 4: NO NOTICE OF LINK 362 WAS EVER PROVIDED.

10. Finding of Fact 18 states that no notice of link 362 was provided in the original application. This Finding erroneously states that the link is located on and impacts only property owned by two of the agreed parties. Link 362 in actuality directly impacts Mr. Rodriguez, as it comes within 50 feet of his property. The failure to ever provide any notice to anyone of link 362 is fatal. This link could not have been contemplated as a part of the final route by Mr. Rodriguez or anyone else. A new hearing must be provided to give all potentially affected

parties notice of this link. The failure to provide such notice prejudices the ability of Mr. Rodriguez or any other party to properly present evidence regarding the viability of this link.

E. POINT OF ERROR NO. 5: THE AGREED ROUTE DOES NOT ADEQUATELY REFLECT COMMUNITY VALUES.

11. Finding of Fact 61 indicates the agreed parties' route has the support of all but two landowners and is therefore an expression of community values. This characterization is both erroneous and misleading. Out of the approximately 1200 individuals notified, approximately 485 actively intervened in this matter. Of those, 43 directly affected intervenors are agreed while 83 non-affected also agreed. This is a very small number in comparison to the total number of affected parties, and cannot be seen as a true expression of community values. It is simply an agreement of a very small group of landowners within the community at large. The finding that the route is an expression of community values cannot be based on this small a number of landowners. A new hearing must be provided to accept actual evidence supporting an actual expression of the full community's values.

F. POINT OF ERROR NO. 6: THE AGREED ROUTE DOES NOT MINIMIZE AFFECTS ON HABITABLE STRUCTURES.

12. Finding of Fact 52 states that the agreed route affects 951 habitable structures, which is the 15th fewest number of habitable structures out of the proposed routes. If 14 other routes (out of 43) affected fewer habitable structures, then it is difficult to see how the agreed route meets the Commission's policy of prudent avoidance. The Commission's Finding of Fact 63 that the route is in accordance with that policy is in error and a new hearing should be provided to ensure that any adopted route is consistent with that policy.

G. POINT OF ERROR NO. 7: THE AGREED ROUTE IS AN UNCONSTITUTIONAL TAKING.

13. Laws which must apply to the Commission's analysis include the following:

Article 1, Section 17 of the Texas Constitution:

(a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

...

(B) an entity granted the power of eminent domain under law;

or...

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

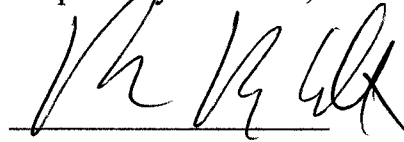
Any findings the Commission makes or orders issued under its rules must also be made in the context of the above constitutional provisions. According to Finding of Fact 33, a majority of deficiencies identified by ERCOT occur only if an additional 250 megawatts (MW) of industrial load is assumed to be present near the Port of Brownsville in the 2014 timeframe, although that load has yet to materialize. It appears then, that a primary purpose of the transmission line appears to be for the economic development of the market in the Port of Brownsville. Takings for transfer to a private entity for the primary purpose of economic development are unconstitutional. It would similarly follow that a public entity condemning easements for private entities for the purpose of the economic development of the Port of Brownsville, a market which, by admission, currently does not exist, would similarly be unconstitutional. If a primary purpose of this transmission line is for the economic development of the Port of Brownsville, then a new hearing must be held to provide parties an opportunity to provide evidence as to why this is an insufficient rationale for exercise of the eminent domain

power.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner Jose R. Rodriguez respectfully requests that his Motion for Rehearing be granted and for such and other further relief to which he may be justly entitled.

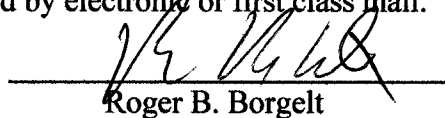
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 30th day of April, 2014, a true and correct copy of the foregoing instrument was served on all parties of record by electronic or first class mail.


Roger B. Borgelt

ATTACHMENT A

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

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14 APR 11 AM 9:17
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**JOINT APPLICATION OF ELECTRIC
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CONVENIENCE AND NECESSITY
FOR THE NORTH EDINBURG TO
LOMA ALTA DOUBLE-CIRCUIT 345-
KV TRANSMISSION LINE IN
HIDALGO AND CAMERON
COUNTIES, TEXAS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the application of Electric Transmission Texas, LLC and Sharyland Utilities, L.P. (applicants) to amend their certificates of convenience and necessity (CCNs) for a new 345-kilovolt (kV) transmission line between the North Edinburg and Loma Alta substations located in the lower Rio Grande Valley. The project is deemed critical to reliability pursuant to P.U.C. PROC. R. 25.101(b)(3)(D).

On January 30, 2014, the State Office of Administrative Hearings' (SOAH) administrative law judge (ALJ) issued a proposal for decision which recommended granting the applicants' application. The ALJ recommended that the Commission adopt filed route 3S as modified pursuant to the supporting landowner requests, referred to as the agreed parties' route. On March 3, the ALJ filed changes to the proposal for decision in response to the parties' exceptions and replies. The Commission agrees with the ALJ's recommendation and adopts the proposal for decision issued, including the findings of fact and conclusions of law, with some modifications.

The Commission modifies finding of fact 10, which was moot due to the elapse of time, to reflect the Commission's granting of a good cause extension of the 180-day deadline for a decision in this proceeding pursuant to P.U.C. PROC. R. 25.101(b)(3)(D) until the date the final order is signed. Additionally, the Commission adds finding of fact 20A to reflect its adoption of all of the ALJ's changes to the proposal for decision. In order to more explicitly address its

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decision to approve the proposal for decision's recommendation of the agreed parties' route, the Commission adds finding of fact 113A. Finally, the Commission deletes conclusion of law 13 as it is unnecessary.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. Electric Transmission Texas, LLC (ETT) is an investor-owned electric utility providing service under certificate of convenience and necessity (CCN) nos. 30193 and 30194.
2. Sharyland Utilities, L.P. (Sharyland) is an investor-owned electric transmission and distribution utility providing service under CCN Nos. 30026, 30114, 30191 and 30192.
3. On July 3, 2013, ETT and Sharyland (applicants) filed an application to amend their CCNs to allow them to build, own, and operate a new double-circuit capable 345-kV transmission line in Cameron and Hidalgo counties, from the existing North Edinburg substation to the existing Loma Alta substation, routed in proximity to the existing South McAllen substation (project). That same day, applicants filed the direct testimonies of Barrett A. Thomas, Teresa B. Trotman, Rob R. Reid, and Mark E. Caskey.
4. On July 8, 2013, the Public Utility Commission of Texas (Commission) referred the application to SOAH, and issued a list of issues to be addressed.
5. Several hundred parties filed requests to intervene.
6. On July 12, 2013, a SOAH ALJ issued Order No. 1 regarding the jurisdiction of the Commission and SOAH, the deadline for a decision in this proceeding, notice requirements, the requirement that applicants file a proposed procedural schedule, the deadline for identifying deficiencies in the application, issues relating to filing procedures, service, deadlines, responsive pleadings, discovery, and the requirement that all parties file testimony and/or a statement of position.

7. On July 22, 2013, a SOAH ALJ held the first of two prehearing conferences, and on July 24, 2013, issued Order No. 2, adopting the proposed procedural schedule, admitting several intervenors, and modifying the service procedures.
8. On August 16, 2013, the ALJ issued Order No. 3, giving notice of the second prehearing conference, modifying discovery procedures, and re-urging that all parties must file testimony and/or a statement of position or be dismissed from the proceeding.
9. On August 30, 2013, SOAH ALJs held the second prehearing conference, and on September 9, 2013, issued Order No. 4, finding good cause pursuant to P.U.C. PROC. R. 25.101(b)(3)(D) to extend the 180-day deadline for decision in this proceeding by approximately two months, although the project was designated critical to reliability. The order amended the procedural schedule, suspended traditional service, and resolved most outstanding requests to intervene.
10. The Commission finds good cause exists to extend the deadline in this docket until the date its final order is signed.
11. On September 17, 2013, several parties requested a hearing on route adequacy.
12. On September 25, 2013, the ALJ issued Order No. 5, granting the request for a preliminary hearing on route adequacy.
13. On September 27, 2013, applicants filed their response, including additional direct testimony responding to the issues to be addressed in the preliminary hearing on route adequacy.
14. On October 8, 2013, an ALJ held a route adequacy hearing, and on October 21, 2013, issued Order No. 6 finding that the application contained an adequate number of routes, but ordering applicants to amend the original application to include supplemental routes, using existing links, that were not routed through the South McAllen substation 3-mile routing circle. Order No. 6 also adopted an amended procedural schedule, which did not extend the hearing dates.

15. On October 28, 2013, applicants supplemented their application to include ten additional routes (routes 1S through 10S) pursuant to Order No. 6 and filed supplemental direct testimony supporting those routes.
16. On November 14, 2013, all intervenors that did not file direct testimony or statements of position were dismissed from the proceeding.
17. On December 2, 2013, the agreed parties filed a joint stipulation of agreed and supporting parties (Joint Stipulation). All 45 of the agreed parties own or have related property interests that would be affected by the modified supplemental route 3S (agreed parties' route). In addition to the 45 directly-affected intervenors, 83 parties indicate their support for the Joint Stipulation. The agreed parties' route is opposed by two landowners and Commission Staff.
18. The agreed parties' route is comprised of the following links: 134-136a-355-137b-138-141-147-152-155-162-165-169-193a-193b-361-351b-193c-194-201-207-208-209-212-214-219-226-233-235-256-258-265-286-285 (partial)-362-279 (partial)-278-268-267-273-308-321-322-327-328-335-340-341. All of the links were noticed in the application with the exception of link 362, which is a small link connecting two noticed links that is located on and impacts only property owned by two of the agreed parties.
19. On December 3, 2013, the ALJ convened the hearing on the merits, which concluded the next day. Evidence was admitted and witnesses were cross-examined. At the hearing on the merits, the ALJ identified the modified supplemental alternative route 3S supported by the stipulating parties as the agreed parties' route.
20. On December 6, 2013, the ALJ issued SOAH Order No. 10 establishing briefing deadlines and admitting additional evidence.
- 20A. On January 30, 2014 the ALJ issued the proposal for decision. After considering the exceptions and replies, on March 3 the ALJ approved changes to the proposal for decision. The Commission adopted all of the ALJ's changes to the findings of fact and ordering paragraphs.

Notice

21. On July 12, 2013, the ALJ issued Order No. 1, requiring Commission Staff (Staff) to file a recommendation on the sufficiency of the notice.
22. Notice was published in the *Texas Register* on July 19, 2013, and supplemental notice reflecting the project's location within the Coastal Management Program (CMP) was published in the *Texas Register* on October 4, 2013.
23. On July 30, 2013, applicants filed proof of notice in the form of an affidavit indicating that notice of the application was: (a) published in newspapers having general circulation in Hidalgo and Cameron counties; (b) sent in both English and Spanish by priority mail to owners of all land within 500 feet of the proposed centerline of any route; (c) sent by first-class mail to utilities providing similar service within five miles of the alternative routing options; (d) sent by first-class mail to county officials in Hidalgo and Cameron counties and the mayors of the cities within five miles of the project; and (e) sent by first-class mail to the Office of Public Utility Counsel. A copy of the application was also provided to the Texas Parks & Wildlife Department (TPWD). Applicants' proof of notice also contained copies of the notices provided.
24. On August 9, 2013, Staff recommended that notice be determined sufficient.

The application

25. The North Edinburg to Loma Alta 345-kV transmission line is a double-circuit capable 345-kV transmission line in Cameron and Hidalgo counties constructed primarily on single-pole structures, from the existing North Edinburg substation to the existing Loma Alta substation.
26. In its endorsement letter, the Board of Directors of the Electric Reliability Council of Texas (ERCOT) recommended the project be routed "in proximity to" the existing South McAllen substation to accommodate the long-term needs of the Lower Rio Grande Valley (Valley).
27. In their application, applicants implemented ERCOT's recommendation by proposing 32 alternative routes, each passing within approximately three miles of the existing South McAllen substation. All routes exiting the North Edinburg substation to the east included

a portion of transmission line that looped back to the west in order to connect to the 3-mile routing circle around that South McAllen substation. All routes exiting the North Edinburg substation to the west looped around the City of McAllen before traveling east through the routing circle towards the Loma Alta substation.

28. On July 24, 2013, Staff found that the application was sufficient for further review on the merits.

Need for the proposed project

29. The project is needed to address the short- and long-term reliability needs of the Valley and has been deemed critical to the reliability of the ERCOT system.
30. Pursuant to P.U.C. SUBST. R. 25.101(b)(3)(A)(ii)(1), ERCOT's recommendation shall be given "great weight" in determining the need for a proposed transmission line project.
31. According to ERCOT, an east-west (cross-valley) 345-kV line is needed by 2016 to prevent several violations of ERCOT and the North American Electric Reliability Corporation planning criteria on the west side of the Valley, including scenarios for catastrophic load shed and the potential for voltage collapse.
32. A cross-valley 345-kV line would also provide needed additional transmission infrastructure to the City of Brownsville, reducing reliability concerns and likely fostering economic development by providing additional capacity for industrial load in and around the Port of Brownsville.
33. A majority of the deficiencies identified by ERCOT occur only if an additional 250 megawatts (MW) of industrial load is assumed to be present near the Port of Brownsville in the 2014 timeframe although that load has yet to materialize.
34. Without the projected 250 MW of additional industrial load near the Port of Brownsville, ERCOT identified a single base-case violation in the Brownsville area and three post-contingency violations.
35. According to ERCOT, routing the project from the existing North Edinburg substation *in proximity to* the existing South McAllen substation would defer or eliminate multiple line upgrades and be the best long-term solution for the western Valley.

36. ERCOT did not define the phrase *in proximity to* in its endorsement letter or the independent review, leaving that to applicants and the Commission.
37. The precise character of an interconnection was not as important as the connectivity between whichever substation was connected to the 345-kV source (*i.e.*, the project) and the overloaded 138-kV lines in the area.
38. The supplemental routes proposed by applicants, including the agreed parties' route, will satisfy the critical need for a cross-valley project from North Edinburg to the Loma Alta substations.
39. Electric customers in the Valley and other customers in the ERCOT system will benefit from the improved transmission system reliability and capacity provided by the project.

Routing of the project

40. Applicants retained POWER Engineers, Inc. (POWER) to prepare an environmental assessment and routing study for the project. POWER used a project team with expertise in different disciplines (geology/soils, hydrology, terrestrial ecology, wetland ecology, land use/aesthetics, socioeconomics, and cultural resources [archaeological and historical]) to delineate and evaluate potential alternative routes for the proposed project based upon environmental and land use conditions present along each potential route, reconnaissance surveys, and the public involvement process.
41. POWER examined potential routes taking into consideration the factors that appear in the Public Utility Regulatory Act, Texas Utilities Code §§ 11.001-66.016 (PURA) § 37.056(c)(4)(A)-(D), P.U.C. SUBST. R. 25.101, and the Commission's CCN application form, which includes addressing the potential impacts of the project within the boundary as defined by the Coastal Coordination Council (CCC) Rule, found at 31 TEX. ADMIN. CODE § 503.1.
42. Applicants held six public open-house meetings in October 2012 to solicit comments from landowners, public officials, and other interested residents regarding the preliminary alternative links. A notice of the public open-house meetings, in both English and Spanish, was mailed to the approximately 12,000 landowners who own property located within 500 feet of the preliminary alternative routing links. After revising the routing

options in response to public input, applicants held an additional open house meeting in February 2013 for new potentially affected landowners that were not mailed notice of the October 2012 meetings.

43. Information received from the public open-house meetings and from local, state and federal agencies was considered and incorporated into both POWER's routing analysis and the eventual selection by applicants of alternative routes.
44. POWER evaluated 42 primary alternative routes using 48 criteria that consider land use, aesthetics, ecology, and cultural resources. POWER also considered route impacts to the Coastal Natural Resource Areas (CNRAs) as part of its evaluation.
45. The routes that were filed in the application varied in length from 96.3 miles to 125.5 miles. The ten supplemental routes varied in length from 86.3 miles to 101.5 miles.
46. Applicants considered and submitted an adequate number of geographically diverse routes.
47. All routes are viable, feasible, and reasonable from an environmental, engineering, and cost perspective.
48. DELETED.
49. The agreed parties' route is approximately 96.1 miles long, which is 9.8 miles longer than the shortest routes (routes 1S and 9S) and 23.7 miles shorter than the longest route (route 13), and has an estimated cost of \$309,295,000, which is \$28,459,000 more than the least costly route (route 9S) and \$96,158,000 less than the most costly route (route 12).
50. No significant impact to existing land use, socioeconomic, geological, hydrological, or wetland resources and no adverse effects to historical or archeological resources are anticipated as a result of construction of the agreed parties' route.

Community Values

51. The term community values is not formally defined by statute or in Commission rules. However, in several CCN dockets the Commission and Commission Staff have

recognized a working definition as “a shared appreciation of an area or other mutual resource by a national, regional, or local community.”

52. The agreed parties’ route directly affects 951 habitable structures, which is the 15th fewest number of habitable structures out of the 43 proposed routes. Link 169, which is part of the agreed parties’ route, accounts for 371 out of the 951 total habitable structures affected by this route.
53. There are six habitable structures within the right-of-way of the agreed parties’ route, all of which are mobile homes. Five of these six habitable structures are along link 169.
54. The Hidalgo County Regional Mobility Authority (Authority) intends to purchase the right-of-way for its international bridge trade-corridor project along the link 169 alignment of the agreed parties’ route by March 31, 2015, and to grant ETT an easement within the international bridge right-of-way. This will result in the Authority removing habitable structures within the right-of-way along link 169 instead of ETT.
55. If the Authority does not acquire the right-of-way along link 169 by March 31, 2015, and grant an easement to ETT, then applicants will work with the landowners who have habitable structures within 75 feet of the centerline of the agreed parties’ route to relocate the habitable structures.
56. The agreed parties’ route crosses 58.3 miles of cropland, 4.1 miles of orchards, 22.3 miles of pasture/rangeland, and no land irrigated by traveling irrigation systems.
57. There are two FAA-registered airstrips with at least one runway more than 3,200 feet in length within 20,000 feet of the centerline of agreed parties’ route, two FAA-registered airstrips with no runway more than 3,200 feet in length within 10,000 feet of the centerline of the agreed parties’ route, one private airstrip within 10,000 feet of the centerline of the agreed parties’ route, and no heliports within 5,000 feet of the centerline of the agreed parties’ route.
58. The McAllen-Miller International Airport (McAllen Airport) is the only public airport in the greater McAllen metropolitan area. The citizens of McAllen, Mission, Pharr, La Joya, Palmhurst, Edinburg, San Juan, Alamo, Donna, and Weslaco rely upon the

McAllen Airport as their primary airport. The airport provides commercial, cargo, military, and private air service.

59. There are no significant impacts to any airports, airstrips, or heliports anticipated from the construction of the agreed parties' route. The agreed parties' route does not negatively impact the McAllen Airport.
60. There are nine AM radio transmitters located within 10,000 feet of the centerline of the agreed parties' route and are 10 FM radio transmitters, microwave towers, and other electronic installations within 2,000 feet of the centerline of the agreed parties' route.
61. With the exception of two landowners, the agreed parties' route has the unanimous support of intervenors in this proceeding, which represents an expression of community values of the study area.
62. Staff recommends that applicants cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project.

Prudent Avoidance

63. The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance.
64. Prudent avoidance is achieved by minimizing, to the extent reasonable, the number of habitable structures located in close proximity to the routes.
65. Applicants and POWER used a constraints mapping process to identify and reduce the impact of the proposed line on various constraints, including habitable structures. Input gathered at the public open-house meetings further reduced the impact of the proposed line on habitable structures.
66. Project area routing constraints included the McAllen-Edinburg-Mission metropolitan area; numerous densely developed cities and communities; numerous federal and state parklands and protected areas, including International Boundary and Water Commission floodway; and the border with Mexico.

Parks and Recreation Areas

67. No parks or recreational areas are crossed by the right-of-way of the agreed parties' route, and two parks or recreational areas are located within 1,000 feet of the centerline of agreed parties' route.
68. The agreed parties' route does not traverse through or cross any parks or recreational areas.
69. The agreed parties' route will not significantly impact the use or enjoyment of a park or recreational facility.
70. Other routes proposed by the applicants do traverse through and/or cross through parks or recreational areas.
71. The agreed parties' route will only be within the foreground visual zone of a park or recreational area for two parks/recreational areas.

Historical and Aesthetic Values

72. Two recorded cultural resource sites are located within the right-of-way of the agreed parties' route, and three additional cultural resource sites are within 1,000 feet of the centerline of the agreed parties' route.
73. The agreed parties' route crosses fewer recorded cultural resource sites than 28 of the routes proposed in this proceeding. Only seven routes cross fewer recorded cultural resource sites than the agreed parties' route.
74. There are no National Register-listed sites crossed by or located within 1,000 feet of the centerline of the agreed parties' route.
75. The agreed parties' route has fewer additional recorded cultural resource sites within 1,000 feet of the centerline than 32 of the routes proposed in this proceeding.
76. The agreed parties' route crosses 38.9 miles of area with high archeological site potential. Many routes proposed in this proceeding have rights-of-way that traverse greater amounts of land considered to be of high prehistoric and historic archeological site potential than the agreed parties' route.

77. In the event applicants or their contractors encounter any artifacts or other cultural resources during project construction, it is reasonable for all work to cease immediately in the vicinity of the resource and for applicants to report the discovery to the Texas Historical Commission (THC).
78. The agreed parties' route crosses within an estimated 13.5 miles of foreground visual zone of US and State highways, 30.7 miles of foreground visual zone of farm-to-market roads, and 8.5 miles of foreground visual zone of parks/recreational areas.
79. During construction, some temporary impacts to aesthetics may occur. These would result from the presence of construction equipment, recent disturbance from clearing and construction, clearing debris, and construction materials along the right-of-way. However, following construction, the right-of-way would be re-vegetated, construction equipment and material used or removed, and debris and trash disposed. The project right-of-way would not present a view dissimilar to other linear rights-of-way throughout the area following completion of construction and restoration activities.
80. Aesthetic impacts of the proposed transmission line have been considered and minimized to the extent possible.

Environmental Integrity

81. The project area contains several tracts of high quality habitat that are part of a wildlife corridor associated with Bensten-Rio Grande Valley State Park, Resaca de la Palma State Park, Las Palomas Wildlife Management Area, and the Lower Rio Grande Valley National Wildlife Refuge.
82. The Rio Grande Valley Wildlife Corridor is comprised of land tracts managed by natural resource agencies, non-profit organizations, private landowners, and local communities. These tracts of land are located in close proximity to one another along or near the Rio Grande River, surrounded by intense agricultural or urban development. Bird movements to, from, and between the tracts of managed land occur daily and seasonally. All of the state parks in the project area are also World Birding Center sites.
83. The Valley is one of the most biologically diverse regions in North America. It is a point of convergence for four climates and for Circum-Gulf and Trans-Gulf migratory birds

within the central flyway. In recent history, more than 90% of the native habitat has been cleared for agricultural and urban development, leaving a patchwork of remnant tracts of high quality native habitat. The remaining patches of tracts set aside for wildlife habitat are especially important to resident and migratory birds because they provide high quality forage and cover and nesting habitat. Preserved tracts of land also provide habitat and freshwater sources in the project area that are extremely important to wildlife.

84. POWER contacted the U.S. Fish and Wildlife Service (USFWS) and the TPWD to obtain information regarding the possibility of encountering any endangered or threatened species in the area affected by the project.
85. POWER studied and analyzed potential impacts to water resources, ecology (including endangered/threatened vegetation and fish and wildlife), and land use within the study area for the project.
86. POWER appropriately performed an evaluation of the impacts of the project on endangered and threatened species.
87. No significant impacts to wetland resources, ecological resources, endangered and threatened species, or land use are anticipated as a result of the construction of the project.
88. Construction of the project will have no significant impact on geological features or resources of the area.
89. The agreed parties' route does not cross any USFWS National Wildlife Refuge system land.
90. The agreed parties' route crosses 3.3 miles of International Boundary Water Commission-managed right-of-way.
91. The USFWS indicated that it would not find a new right-of-way across the Lower Rio Grande Valley National Wildlife Refuge to be an appropriate or compatible use.
92. To protect raptors and migratory birds, Commission Staff recommends that applicants follow the procedures outlined in the following publications for protecting raptors: Avian Power Line Interaction Commission (APLIC), 2012, *Reducing Avian Collisions with*

Power Lines: The State of the Art in 2012, Edison Electric Institute and APLIC, Washington, D.C.

93. Commission Staff recommends that applicants minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate right-of-way clearance for the project. In addition, applicants shall revegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, applicants shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.
94. Commission Staff recommends that applicants implement erosion control measures as appropriate and return each affected landowner's property to its original contours unless otherwise agreed to by the landowners. Applicants shall not be required to restore the contours and grades to their original state where different contours or grades are necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.
95. Commission Staff recommends that applicants exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way.
96. Commission Staff recommends that applicants use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

Compatible Corridors

97. The agreed parties' route uses or parallels existing compatible corridors (including apparent property boundaries and existing transmission lines) to a reasonable extent. The agreed parties' route parallels 26.6 miles of existing transmission line right-of-way, 34.8 miles of other existing right-of-way, and 16.2 miles of apparent property lines.
98. The agreed parties' route does not use any length of existing transmission line right-of-way. This is typical of the routes filed in this proceeding. Thirty-eight other routes proposed in this proceeding also do not use any length of existing transmission line right-

of-way. Of the four proposed routes that use any length of existing transmission line right-of-way, for those routes, less than a mile is used.

99. The agreed parties' route parallels existing transmission line rights-of-way for 26.6 miles, or over a quarter of its total length.
100. The agreed parties' route parallels other existing rights-of-way (such as highways, pipelines, railways, and canals) for 34.8 miles, or more than a third of its total length.

Coastal Management Program

101. The project is located within the CMP boundary as defined in 31 TEX. ADMIN. CODE § 503.1 of the CCC's rules.
102. The project is located seaward of the coastal facilities designation line as defined in 31 TEX. ADMIN. CODE § 19.2(a)(21) of the CCC's rules.
103. P.U.C. SUBST. R. 25.102 states that the Commission "may grant a certificate for the construction of generating or transmission facilities within the coastal boundary as defined in 31 TEX. ADMIN. CODE § 503.1 only when it finds that the proposed facilities are consistent with the applicable goals and policies of the coastal management program specified in 31 TEX. ADMIN. CODE § 501.14(a), or that the proposed facilities will not have any direct and significant impacts on any of the applicable coastal natural resource areas specified in 31 TEX. ADMIN. CODE § 501.3(b)."
104. The CCC rule at 31 TEX. ADMIN. CODE § 501.14(a) was repealed and replaced without substantive changes by 31 TEX. ADMIN. CODE § 501.16. (*Texas Register*, Vol. 29, Number 30, July 23, 2004, p. 7039).
105. The policies for the construction of electric transmission lines to or on coastal barrier resource system units and otherwise protected areas (barrier islands) are found at 31 TEX. ADMIN. CODE § 501.16(a)(4). The rule states that transmission lines constructed on coastal barriers shall:
 - be located, where practicable, in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects; and
 - be located at sites at which future expansion shall avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent

practicable.

106. Though this project is not located on a barrier island, applicants selected alternative routes that comply with this goal by paralleling existing ranch roads and previously disturbed areas to the greatest extent practicable. In addition, any future expansion that will require a CCN will be reviewed for consistency with CCC goals and policies by the Commission.
107. CNRAs, as designated in 31 TEX. ADMIN. CODE § 501.3(b), include the open waters of the Gulf of Mexico, waters under tidal influence, submerged lands, coastal wetlands, submerged aquatic vegetation, tidal sound and mud flats, oyster reefs, hard substrate reefs, coastal barriers, coastal shore areas, gulf beaches, critical dune areas, special hazard areas (floodplains, etc.), critical erosion areas, coastal historic areas, and coastal preserves.
108. To determine whether any CNRAs are located along the alternative routes, POWER conducted a review of the CMP and performed field reconnaissance in the study area. POWER also reviewed aerial photography and associated mapping provided by the Texas General Land Office, Federal Emergency Management Agency, USFWS, and the U. S. Geological Survey. Based on this review, POWER determined that the following CNRAs are located along the alternative routes to varying extents: coastal wetlands, special hazard areas, and coastal historic areas.
109. The goals of the Texas CMP are enumerated in CCC rule 31 TEX. ADMIN. CODE § 501.12. The goals applicable to the project are:
 - to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs;
 - to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone;
 - to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;
 - to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone; and

- to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP.

110. The foregoing findings of fact demonstrate consistency with the applicable goals of the Texas CMP as enumerated in CCC rule 31 TEX. ADMIN. CODE § 501.12:

- The project minimizes impacts on CNRAs by routing in previously disturbed areas where practicable;
- The project is routed, designed, and will be constructed using the best utility practices;
- Notice was given to the public, directly affected landowners, municipalities, counties, and neighboring utilities; and
- The project received public comment filings, directly affected landowner interventions, and input from local, state, and federal agencies.

111. The foregoing findings of fact demonstrate consistency with the applicable policies of the Texas CMP as enumerated in CCC rule TEX. ADMIN. CODE § 501.16 (4):

- The agreed parties' route has 15.9 miles seaward of the CMP boundary. Applicants will attempt to span coastal wetlands to the greatest extent practicable.
- The agreed parties' route parallels existing ranch roads and previously disturbed areas to the greatest extent practicable.
- The agreed parties' route is not located in Gulf beaches, critical dunes, or washovers.
- The agreed parties' route crosses the least amount of coastal wetlands of the routes evaluated.
- The agreed parties' route crosses 19.1 miles of 100-year floodplains. None of the alternative routes should have a significant impact on the function of the floodplain where structures may be located. Any transmission structures located within the floodplains would be designed and constructed such that they would not impede the flow of any waterway or create hazards during a flood event.
- None of the coastal historic areas are located within 1,000 feet of the centerline of the agreed parties' route.

Estimated Costs

112. Including substation costs and costs associated with resolving potential mutual coupling issues, and allowance for funds used during construction, the estimated costs for the alternative routes filed in the application range from \$313,894,000 (route 22) to \$405,453,000 (route 12). The estimated costs for the supplemental routes filed in the

October 28, 2013 amended application range from \$277,264,000 (route 9S) to \$339,347,000 (route 5S).

113. The agreed parties' route has an estimated cost of \$309,295,000.
- 113A. The applicants' estimates of costs for the competing routes compared to the agreed parties' route does not take into consideration market congestion cost incurred as a result of construction delays that may occur in this project if a route with less landowner support is chosen.
114. As part of the joint stipulation, applicants have agreed to modify portions of link Nos. 285 and 279 to create a new link 362 that better parallels property boundaries, avoids placing the centerline of the right-of-way within 500-ft of 10 habitable structures otherwise affected by link 285, and has a less detrimental impact on the residential development currently occurring on the impacted property. The estimated incremental cost of these modifications is approximately \$1,423,000. The cost of these modifications has been incorporated into the estimated cost of \$309,295,000 for the agreed parties' route.

TPWD's Comments and Recommendations

115. TPWD filed comments and recommendations on September 17, 2013 and direct testimony of Russell Hooten on November 8, 2013.
116. No modifications to the project are required as a result of the recommendations and comments made by TPWD.
117. The letter and testimony primarily addressed mitigation of potential impacts to wildlife and natural resources. This Order addresses only those TPWD recommendations and comments for which there is record evidence.
118. Applicants have agreed to comply with TPWD's recommendations where reasonable and possible, consistent with the need to complete the project in a timely and cost-effective manner.
119. TPWD's September 17, 2013 letter recommends the Commission review and consider recommendations in previous TPWD correspondence dated March 31, 2013. Applicants

followed many of TPWD's recommendations relating to the use of existing right-of-way, revegetation of distributed areas, avoiding impacts to water resources, erosion controls, and avoiding potential impacts to endangered species.

120. TPWD's September 17, 2013, letter recommends that the Commission avoid considering the absence of data in the Texas natural diversity database (TXNDD) as an indication of absence of rare/endangered species on the landscape and recommends surveying for rare/endangered species at the appropriate time of year along the selected routes.
121. Utilities do not gain access to private property until after a route is approved by the Commission. As a result, applicants identified known/occupied areas of endangered or threatened species habitat based on information in the TXNDD database and other available information. Once a route is approved by the Commission, applicants can undertake on-the-ground measures to identify potential endangered or threatened species habitat and respond appropriately.
122. TPWD recommends the use or paralleling of existing disturbed corridors wherever possible to minimize habitat fragmentation.
123. The agreed parties' route reasonably balances the variety of factors that the Commission must consider in selecting transmission line routes, some of which favor the use of previously disturbed areas (*e.g.*, paralleling existing linear corridors) and some of which do not (*e.g.*, avoiding habitable structures).
124. TPWD's recommendation that applicants prepare a mitigation plan with a 1:1 replacement ratio for impacted habitats could significantly increase the cost of the project. The Commission has not typically imposed such a requirement in previous transmission line CCN cases. Applicants will revegetate impacted areas with native species, in accordance with the ordering paragraphs below.
125. It is reasonable for applicants to place bird flight diverters on all portions of the transmission line approved in this proceeding and constructed in the area east of US 77, as recommended by TPWD.
126. Applicants will implement TPWD recommendations that state-listed threatened species observed during construction be allowed to leave the site or be relocated to a suitable

nearby area; that, with landowner approval, rare species occurrence information discovered by applicants be submitted to the TXNDD; that disturbed habitat of such species be re-vegetated with suitable vegetation; and that cleared trees be used to construct brush piles and sparse clumps of low-growing shrubs be allowed to encroach the right-of-way to provide cover for wildlife, consistent with the need to complete the project in a timely and cost-effective manner.

127. Implementation of the measures set forth in the ordering paragraphs in this Order to minimize the impact of line construction on wildlife, including following certain procedures for protecting raptors, using extreme care in the application of chemical herbicides, minimizing disruption of flora and fauna, and revegetating with native species following completion of construction, combined applicants' mitigation practices set out in the application and its testimony and with applicants' agreement to adopt TPWD's recommendations set forth in the above finding of fact, will sufficiently address the concerns expressed by TPWD in its recommendations and comments.
128. The following TPWD recommendations or comments are not adopted for the issuance of a final order in this docket because they are not necessary or are not operationally practicable: (a) that impacts associated with habitat loss and fragmentation be examined further before a route is selected; (b) that applicants have a biological monitor on hand during clearing and construction activities to protect state-listed reptile species; and (c) that any route selected be surveyed by a qualified botanist familiar with rare plants of South Texas before construction.

II. Conclusions of Law

1. ETT and Sharyland are electric utilities as defined in PURA §§ 11.004 and 31.002(6).
2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, and 37.056.
3. SOAH had jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE § 2003.049).

4. Applicants provided proper notice of the application in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).
5. The application is sufficient and notice was adequate.
6. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, TEX. GOV'T CODE Chapter 2001 and the Commission's rules.
7. Applicants are entitled to approval of the application as described in the findings of fact, taking into consideration the factors set out in PURA § 37.056(c)(4)(A)-(D) and (F).
8. The agreed parties' route complies with the routing factors in PURA § 37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
9. The project is necessary for the service, accommodation, convenience or safety of the public within the meaning of PURA § 37.056(a), taking into consideration the applicable factors set out in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101.
10. The proposed project is consistent with the goals and policies of the Texas CMP specified in 31 TEX. ADMIN. CODE § 501.16 [formerly § 501.14(a)].
11. The project will not have any direct and significant impacts on any of the applicable CNRAs specified in 31 TEX. ADMIN. CODE § 501.3(b).
12. Consistent with ERCOT's determination that the project is critical to the reliability of the ERCOT system pursuant to P.U.C. SUBST. R. 25.101(b)(3)(D), the project is necessary for the service, accommodation, convenience, or safety of the public, consistent with PURA § 37.056(a).
13. DELETED.

III. Ordering Paragraphs

In accordance with these fact statements and legal conclusions, the Commission issues the following order:

1. Applicants' application to amend their CCN for the proposed project along the agreed parties' route is approved, providing all modifications to route 3S as indicated in the joint

stipulation do not move the proposed route to within 500 feet of any habitable structure(s) that is not currently within 500 feet and properly noticed unless a waiver of notice or consent from the affected property owner(s) is obtained.

2. In the event applicants or their contractors encounter any archeological artifacts or other cultural resources during project construction, work shall cease immediately in the vicinity of the resource and the discovery shall be reported to the THC. In that situation, applicants shall take action as directed by the THC.
3. The applicants shall follow the procedures described in the following publications for protecting raptors: Avian Power Line Interaction Commission (APLIC), 2012, *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, Edison Electric Institute and APLIC, Washington, D.C. The applicants shall take precautions to avoid disturbing occupied nests and will take steps to minimize the impact of construction on migratory birds, especially during nesting season.
4. The applicants shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way. Herbicide use shall comply with rules and guidelines established in the Federal Insecticide, Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.
5. The applicants shall minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission project. In addition, applicants shall revegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, applicants shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.
6. Applicants shall implement erosion control measures as appropriate. Said erosion control measures may include inspection of the right-of-way before and during construction to identify erosion areas and implement special precautions as determined reasonable to minimize the impact of vehicular traffic over the areas. Applicants will also exercise care

when clearing near waterways and will take reasonable steps to minimize adverse impacts on vegetation. Also, applicants shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner. However, applicants shall not be required to restore original contours and grades where different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.

7. Applicants shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
8. For all portions of the transmission line approved in this proceeding and routed east of US 77, applicants shall use bird flight diverters to mark the transmission lines.
9. Applicants shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviation to the approved route shall only directly affect landowners who were sent notice of the transmission line under P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation, excluding public right-of-ways.
10. 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 Authority purchases the land in fee simple along the link 169 alignment by March 31, 2015, and grants ETT an easement on Authority property, then ETT is authorized to locate the transmission line within that easement.
11. Applicants shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, applicants shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of, or participated in, this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay the project. Unless these two conditions are met, this paragraph

does not authorize applicants to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

12. Applicants shall update the reporting of this project on their monthly construction progress reports prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b).
13. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 10th day of April 2014.

PUBLIC UTILITY COMMISSION OF TEXAS


DONNA L. NELSON, CHAIRMAN


KENNETH W. ANDERSON, JR., COMMISSIONER


BRANDY D. MARTY, COMMISSIONER