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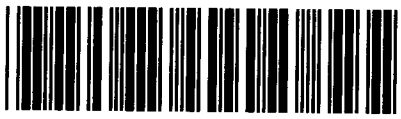

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SOAH DOCKET NO. 473-15-1589
PUC DOCKET NO. 43599

APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED BLUMENTHAL SUBSTATION AND 138-KV TRANSMISSION LINE PROJECT IN BLANCO, GILLESPIE, AND KENDALL COUNTIES	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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LCRA TRANSMISSION SERVICES CORPORATION'S REPLY BRIEF

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LCRA TRANSMISSION SERVICES CORPORATION'S REPLY BRIEF

I. Introduction

As noted by LCRA TSC in its Initial Brief, the issue of "need" is not in question in this case.[1] That point was fairly obvious from the positions the parties took in their testimony and in the evidence adduced at hearing, during which time the parties directed virtually all their attention and argument on routing issues. As a result, LCRA TSC's Reply Brief will not address issues related to need other than tangentially when refuting a minor point or two raised in the initial briefs. Furthermore, because LCRA TSC's Initial Brief touched on all the areas raised in its CCN filing and in its Direct and Rebuttal testimony, many issues will not be addressed again here, though this Reply Brief will list all the issues contained in the Table of Contents for the sake of continuity. In no case, however, should LCRA TSC's silence on any issue in this Reply Brief be considered acquiescence or waiver; LCRA TSC simply does not want to burden the record with unnecessary argument.

In CCN cases parties typically argue about the relative merits of the routes proposed by the applicant, depending on how particular routes affect them personally. That is the simple reality of a contested CCN case process and is to be expected given the spe-

[1] *See, e.g.,* Staff Initial Brief at 5 ("No party in this proceeding disputes that there is a need for the Proposed Project"); Wilson Farmer Families Initial Brief, at 6 ("No party disputed the need of this proposed transmission line"). It is also telling that the parties to this case focused all of the attention in their initial briefs on routing issues in attempting to describe which route, in their respective opinions, best complied with the statutory and regulatory criteria.

cial love and feeling each landowner feels for his or her land. It was also the case here, with parties lining up to support or attack routes that, not coincidentally, resulted in recommendations that moved the supported route off of their respective properties to some other portion of the study area. Again, that is not surprising and is to be expected. The ALJs' task here is to work through the arguments and evidence to discern which route best fits the facts the ALJs (and ultimately the Commission) believe control in the particular case under review.

For example, in one case preserving the aesthetics of an area or areas within the study area may be paramount. In another case, length and cost may be more important. And yet in another case the decision-maker may deem keeping the transmission line away from habitable structures to be controlling. Each case is different, which is why LCRA TSC proposed 20 routes using 69 segments, which segments can then be combined into even more routes to give the ALJs and the Commission a robust set of geographically diverse routes from which to choose. In the end, while LCRA TSC identified (not "recommended")[2] Route 17 as the route that best complies with the statutory and regulatory criteria, any of the routes will accomplish the purposes behind the CCN Application.[3]

Note, at this juncture it is important to point out that *every route* and *every segment* proposed by LCRA TSC in its CCN Application is fully supported by expert opinion in the evidence and any of those 20 routes, or any new *route comprised of any of the 69 segments*, may be approved by the Commission despite the fact that many of the routes were not the subject of discussion during the hearing or in the parties' testimony. Katherine Peake (Ms. Peake) and FM 1888 Scenic Byways Alliance (1888 SBA)[4] both

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[2] See, e.g., Tr. at 51, 59, 808-810.

[3] Tr. at 836 (Wenmohs: "I would quibble a little bit with your use of the word "recommend." We recommend all 20 routes. And tacked on top of those 20 routes that we recommend, that are in our application, are various routes that have been cobbled together in different forms by the Intervenor groups, which is their right, that include Modified 11, Modified 16, 17Y – or Modified 17, as it may be referred to in some places. We recommend any of these routes.")

[4] LCRA TSC will refer to the "FM 1888 Scenic Byways Alliance" as "1888 SBA" throughout this Reply Brief to avoid confusion in geographic references to the actual highway (FM 1888) and the intervenor group.

make statements suggesting certain routes are "off the table."[5] Ms. Peake and 1888 SBA are wrong. While the parties argued over a handful of LCRA TSC's proposed routes and/or their variants during the hearing, the fact of the matter is that every single route and/or segment contained in the CCN Application is sponsored and supported by record evidenced contained in the CCN Application, the direct and rebuttal testimonies of LCRA TSC's experts, and the record from the hearing.[6]

Having said that, it is correct to observe that the parties focused their attention on several routes in this case: Route 17/17Y/17-Modified; Route 11/11-Modified; and Route 16/16-Modified. The majority of the evidence contained in the parties' testimonies addresses those routes. LCRA TSC believes that these routes (as the other routes contained in the CCN Application) are all supported in the evidence, are acceptable, address the issues raised in the CCN Application, and can be constructed safely and efficiently. Stated differently, no routes are "off the table," be they routes proposed in the CCN Application (discussed or not discussed during the hearing) or new routes cobbled together from noticed segments, such as Route 17Y/17-Modified, Route 11-Modified, or Route 16-Modified.

In terms of the major issues raised in hearing and addressed in this Reply Brief, LCRA TSC will lightly address (if at all) the usual issues related to the emphasis given certain routing criteria data by the parties to support or attack a particular route. However, LCRA TSC will address in detail several novel questions of how to deal with conservation easements, the issue of parcel lines versus "property boundaries" or "property lines," right-of-way (ROW) acquisition costs, "other" (i.e., habitat mitigation) costs, and, of course the VORTAC issue. LCRA TSC believes that these issues represent matters where one or more parties attempted to "disqualify" or severely downgrade the viability of a route such that a route fared far worse in what may be a set of routes very close together in many characteristics. While additional detail will be presented later in this Reply Brief on these issues, a few key concepts related to them are worthy of consideration as an overview.

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[5] *See, e.g.*, Mrs. Peake Initial Brief at 2, "No party proposed that the commission approve either Route 1 or 2;" and 1888 SBA Initial Brief at 58, "No party is advocating for Route 4," *Id.*, "No party is advocating for Route 9," and *Id.*, at 59, "No party is advocating for Route 19."

[6] Tr. at 51, 59, 808-810, and 836.

Conservation Easements.

There are two conservation issues involved in this case, the conservation easement held by the Hill Country Land Trust on the Hershey Ranch (Hershey Ranch) and the conservation easement held by the Nature Conservancy on land owned by Chris Hale (Mr. Hale). From the beginning of this case the position expressed by supporters of both conservation easements has been that LCRA TSC should have either avoided them altogether, or should have given them special consideration because their conservation easements encompass, in whole or in part, essential elements of "environmental integrity." As a result, they contend they should be bypassed by any alternative route segments and/or routes.[7] LCRA TSC has been aware of both conservation easements from the beginning of this proceeding and is sensitive to the reasons why these landowners chose to burden their respective properties with conservation easements. However, it is a fact that conservation easements, *per se*, are not considered routing constraints that should be avoided in either PURA (i.e., §37.056(c) or the Commission's Substantive Rules (i.e., §25.101).[8] In fact, conservation easements are not mentioned at all. As a result, LCRA TSC believes that unless and until the Commission establishes a policy for conservation easements, each conservation easement in this case must be assessed on its own merits, on its own facts, and on the effect it may have on other landowners.

In this case, LCRA TSC treated each conservation easement property the same as other properties and proposed routes that crossed both conservation easements. It should be noted that despite their respective positions on avoidance, both properties are already substantially impacted by infrastructure modifications. Mr. Hale's property is crossed by LCRA TSC's T-342, the line into which the transmission line that is the subject of this case will tap. T-342 was part of the CREZ build-out and was singled out by the Commission as the replacement for the Gillespie to Newton CREZ transmission line that was not approved in Commission Docket No. 37448. Subsequent to that docket, LCRA TSC rebuilt T-342 replacing older wooden H-frames with modern steel monopoles such as the

[7] *See, e.g.*, Letter from Katherine Peake on behalf of the Hill Country Land Trust, June 18, 2014 (on behalf of the Hershey Ranch); response of LCRA General Manager, Phil Wilson, to Ms. Peake, June 25, 2014; and email from Dan Snodgrass to Lance Wenmohs, May 30, 2014; Attachment A to this brief and included in the CCN Application in Appendix A.

[8] Tr. at 603.

ones LCRA TSC proposes to use with this project. As far as the Hershey Ranch is concerned, it is also no stranger to infrastructure, as the evidence showed that until very recently it had been crossed by a gas pipeline easement. The pipeline has been abandoned but the linear feature defined by the noticeable "scar" on the ground left by the pipeline is still there and has been exacerbated by the decision of the Hershey family to physically remove the pipeline out of the ground.[9] In short, LCRA TSC believes the ALJs and the Commission may consider both conservation easements as possible locations upon which to route this transmission line. With respect to the Hershey Ranch, routing along the abandoned pipeline ROW using the construction techniques described by LCRA TSC engineer, Jessica Melendez, would help to avoid new fragmentation on other properties not currently fragmented by ROW or other linear features.

LCRA TSC pointed out that avoiding properties burdened with conservation easements would not only provide an incentive for landowners to initiate the process of placing a conservation easement on their properties after an open house as a way to insert a "stop sign" into a utility's routing study, but would also reduce the possible routing corridors available for review and put neighboring properties at greater risk of having the Commission route placed on them.[10]

LCRA TSC's position about the risk of conservation easements resulting in shifting potential routing segments among landowners was ultimately proven true: Luckenbach Alliance and Staff proposed Routes 17Y and 17-Modified, respectively, which replaced Segment X with Segment Y, thereby avoiding Mr. Hale's property.[11] The majority of parties ultimately filed testimony recommending the adoption of Route 17Y, which bumps Route 17 across FM 1888 and avoids Mr. Hale, but then places the line on his neighbors and proximate to more habitable structures than LCRA TSC's proposal. While LCRA TSC encourages further discussion of this issue in the PFD, the ALJs should note that avoiding conservation easements *per se* comes with certain unintended (and perhaps even intended) consequences. Even so, in this case Route 17Y is a perfectly good route that will accomplish the purposes for which the CCN Application was filed.

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[9] Tr. at 608.
[10] *See*, LCRA TSC Ex. 13, Reid Rebuttal Test. at 9-10.
[11] Tr. at 758.

"Property lines" v. Parcel lines, and Estimated Easement Acquisition Costs

In a CCN case, LCRA TSC relies on tax information from county appraisal districts (appraisal districts) for three purposes: landowner notice; parcel boundary data defining parcel boundaries; and assessed values for individual properties used as a basis to estimate easement acquisition costs. In all three of those instances LCRA TSC uses the information provided from an appraisal district in the county in which a particular parcel in question is located. In none of those instances does LCRA TSC second-guess or "go behind" the information retrieved from a particular appraisal district because there is no procedural or substantive rule that requires such action, but more importantly, because there is no need to do so. With respect to notice, the procedural rules expressly require the use of appraisal district information to gather the names of property owners to whom LCRA TSC must provide notice.[12] For parcel boundary data and assessed valuation information, LCRA TSC is legally entitled to rely on information retrieved from an appraisal district office because that is the very purpose for which the appraisal district exists in the first place.[13]

In this case several parties complained of LCRA TSC's use of parcel boundary information retrieved from the Appraisal districts in Gillespie, Kendall, and Blanco counties to define "property lines," as used in the Commission's routing criteria.[14] These parties complain that Commission Subst. R. 25.101(b)(3)(B)(iii) requires use of "property lines" not "parcel lines" or "apparent property lines," but they define "property lines" as

[12] During the hearing Friends suggested LCRA TSC's use of appraisal district data to provide a single notice to a landowner who may have several parcels listed under his or her name was inconsistent with its reliance on appraisal district data to display individual parcels on its routing maps. There is no inconsistency. In prior cases, landowners have complained to LCRA TSC about receiving multiple notices for each property owned, despite the fact the properties may have been adjacent to each other or on the other side of the study area. Because the standard notice letter apprises the landowner that "your property may be affected," without naming the various properties for which the landowner was noticed, LCRA TSC decided some time ago to mail one notice to a property owner for whom the appraisal district may list a number of parcels. Having received a notice, it is then up to the landowner to determine how or why any of the properties he or she owns is affected. That is entirely different from the situation suggested by Friends, where LCRA TSC should apparently be clairvoyant enough to understand that properties listed under common ownership were not meant to be listed separately, or worse, where parcels adjacent to one another but listed under different names should, in fact, have been considered to be part of the same ranch or "property."

[13] *See* 1 Texas Code Ann. Tax § 6.01 (Vernon's 2015).

[14] Those parties include, for example, Luckenbach Alliance, Friends for the Preservation of the Hill Country (Friends), Williams Creek Watershed Landowners (WCWL), and Headwaters Ranch (Headwaters Ranch).

information that is not necessarily reflected in the parcel boundary data retrieved from the appraisal districts by LCRA TSC. According to these parties,[15] many individuals combine or aggregate individual tax parcels into larger properties which the landowner may consider to be "my property." As a result, LCRA TSC's use of the individual tax parcel descriptions shown on the relevant routing maps may not show the correct "property lines" because the intervenor in question considers the boundaries surrounding the larger aggregated properties to be their "property lines," not necessarily what the appraisal district in one or several counties may show.

In past cases LCRA TSC has used appraisal district information to define parcel boundaries, which were then used to define "property lines" for purposes of compliance with Comm. Subst. R. §25.101(b)(3)(B)(iii).[16] That is entirely appropriate. Despite these intervenors' claims that using parcel lines causes unnecessary fragmentation of "their properties" and does not reflect what *they* consider to be their property lines, it is not LCRA TSC's burden or responsibility to investigate or question why an individual appraisal district reflects the parcel lines in the manner it does. The property owner may have never gotten around to re-surveying the parcels into a larger, unified ranch; the property owner may have tax reasons for keeping the parcels separated on the county tax rolls; the property owner may not care that each parcel is assessed separately; or the property owner may simply like the possibility of selling off each parcel separately.[17] Regardless, LCRA TSC's use of parcel boundaries, as derived from data retrieved from the Gillespie, Kendall, and Blanco county appraisal districts, is consistent and reasonable.

1888 Scenic Byways Alliance (1888 SBA) also complains of LCRA TSC's use of appraisal district data to estimate easement acquisition costs. Essentially, 1888 SBA con-

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[15] Notably, Friends for the Preservation of Texas Hill Country (Friends) and Williams Creek Watershed Landowners (WCWL).

[16] For example, over the last ten years LCRA TSC has used this same methodology and interpretation of Subst. R. §25.101(b)(3)(B)(iii) in Docket Nos. 37448, 37778, 38354, 39479 and 40684. The Commission has not indicated to LCRA TSC that this analysis is inappropriate.

[17] Tr. at 158 (Reid: "They are following tax tract IDs, which are separate pieces of property which can be bought and sold separately, could be acquired separately, could be pieced together separately. We have people in this case that own property in families with different names that they call family ranches. We have tracts that are divided by highway, single tracts..."). Ownership and intentions regarding even adjacent properties can become quite complicated, as they may reflect both present plans and a desire to preserve future development options, as illustrated by the testimony of Friends witness Howard. *See*, Tr. at 545-549, 555-556.

tends that so-called discrepancies resulting from different assessed values for similarly-sized segments – discrepancies caused because different appraisal districts assess properties at different costs – are somehow an indictment of LCRA TSC's use of assessed valuations for properties retrieved from the appraisal district responsible for assessing property taxes in a given county. Without being flippant, LCRA TSC believes that the data are what they are. It is not LCRA TSC's responsibility to independently assess and value individual properties in a manner similar to the way they would be assessed during a condemnation proceeding, where much more detail and granularity is required. For purposes of establishing a consistent methodology across a study area for estimating easement acquisition costs (as LCRA TSC is required to do in the CCN Application) it is perfectly reasonable for LCRA TSC to rely on tax information retrieved from Appraisal districts in the counties in question, *because that is what the appraisal districts are legally supposed to do*. Each appraisal district assesses properties consistently within its area of jurisdiction, and whether similarly-sized properties in neighboring counties are assessed differently by another appraisal district is irrelevant, *per se*, and is particularly irrelevant here. Estimated easement acquisition costs are compiled to produce an *estimate* of easement acquisition costs, for CCN comparison purposes; such estimates should not (by Commission order) attempt the valuation investigation required in a condemnation proceeding or the degree of granularity required therein.[18] 1888 SBA's implicit suggestion that LCRA TSC should have undertaken some type of market analysis for properties affected by proposed transmission lines would not only inject an entirely new level of litigation into a CCN case, but would markedly increase the cost of CCN proceedings at the Commission.

"Other Costs."

"Other costs" that are considered by LCRA TSC as part of its potential easement costs are the estimated costs of mitigation for potential modification of habitat of two federally-classified endangered species, for the Golden Cheeked Warbler (GCW) and Black Capped Vireo (BCV). Because Route 17 had the least amount of estimated habitat mitigation costs assigned to it, 1888 SBA attacked the estimation method LCRA TSC

[18] *See*, Order of Referral and Preliminary Order, at 5, Interchange Item No. 117.

used in an effort to make other routes look worse by comparison with Route 17. However, as LCRA TSC explained in testimony, its methodology (the use of three different studies as a barometer to gauge the probability of finding GCW habitat) was entirely appropriate and conservative. Regardless of whether one study, two studies, all three studies, or no study predicts GCW habitat, the fact of the matter is that LCRA TSC may have to incur habitat mitigation costs after consultation with the US Fish and Wildlife Service (USFWS). There is no way to know at this point whether any mitigation costs will be incurred because a proper assessment cannot be done until after the route is determined. Consequently, the use of the three habitat assessment studies to estimate the probability of finding GCW habitat is conservative and provides an estimate of costs that LCRA TSC may reasonably expect to incur. As for BCV habitat, 1888 SBA complains that the difficulty in estimating mitigation for BCV somehow impugns the estimate of such costs included by LCRA TSC for certain routes. The estimate of GCW habitat is conservative, and likely accounts for any BCV habitat, should it be present. Because the estimates are conservative, using the three habitat assessment studies is an appropriate proxy for capturing any possible BCV mitigation costs, particularly in the absence of any BCV habitat assessment modeling or studies.

The VORTAC.

The only party to contest LCRA TSC's manner of dealing with the VORTAC was Jenschke Lane Preservation Alliance (JLPA).[19] It is difficult to describe JLPA's position regarding the VORTAC without understanding how lacking in substance, propriety, and probative value were the testimonies offered by Mr. Raymond Syms and Mr. John Kuhl, whose testimonies purported to criticize LCRA TSC's determination that all segments, including Segments S, T, and V in proximity to the VORTAC, could be safely constructed. Aviation issues and regulations, particularly those surrounding a VORTAC (unlike to a lesser extent, those surrounding aviation surfaces around public and private airports) are

[19] 1888 SBA initially adopted the conclusions reached by JLPA's two alleged expert witnesses, Raymond Syms and John Kuhl because their testimonies were the basis for asserting Routes 17/17Y were severely infirm. As the hearing wore on and Messrs. Syms and Kuhl testimonies were discredited, it appeared 1888 SBA distanced itself from JLPA insofar as they may have initially shared arguments opposing Routes 17/17Y; 1888 SBA has hedged their bets by extolling the virtues of Route 16 Modified in its briefing and advocating for the choice of either Route 11/11 Modified or Route 16/16 Modified..

extremely technical in nature, and require an expert experienced and knowledgeable in the field to understand not only what the regulations say, but what they mean and how they are applied in practice. The only person with those qualifications in this case was an individual who had spent considerable time examining this very issue well in advance of the CCN filing and who appeared as LCRA TSC's rebuttal witness, Mr. Clyde Pittman. Not only were JLPA's two witnesses who purported to opine on aviation issues (Mr. Syms), or rely on certain conclusions in making routing determinations (Mr. Kuhl), lacking in the technical expertise necessary to make a proper evaluation of the VORTAC or the VORTAC *vis-a-vis* routing metrics, neither gentleman exercised the due diligence necessary on which to base the technical conclusions expected of any witness who purports to testify as an expert in Commission routing cases. Indeed, in the case of Mr. Syms, he admitted he had not even read the CCN Application, which is the bare minimum expected of any witness, much less one who proposes to testify as an expert:

> Q: Okay. So you did not look at the application as it was filed on October 31st, 2014?
>
> A: We looked at the materials that were presented to us from the voluminous room.
>
> Q: Okay. Do you know – was the application of LCRA TSC presented to you as some of the materials from the voluminous room?
>
> A: It may have been. Because, as I said, we had quite a stack of materials that we went through.
>
> Q: Okay. So you can't tell me today whether or not you've looked at LCRA TSC's actual application?
>
> A: I looked – *I never looked at the application.* But we may not have drilled down on that particular aspect of it. At this point, it's moot, the reason being is they did change. And the current exhibits do exhibit what is not the current routing, as I understand it.[20] (Emphasis added).

The ALJs exercised their prerogative to deny motions to strike Mr. Syms' testimony as unreliable expert testimony.[21] At the same time the ALJs noted that they would

[20] Tr. at 642. *See also further*, Tr. 640-646.
[21] Tr. 650.

apply the proper weight to the testimony. In that case, LCRA TSC believes little or no weight should be given either testimony for reasons discussed below, reasons articulated in the initial briefs of several parties (notably Friends and Luckenbach Alliance), and reasons LCRA TSC suspects will be further articulated in the reply briefs of the parties. Suffice it to say here that there is no route or route segment that is disqualified in any manner by virtue of its proximity to the VORTAC.[22]

II. Procedural Background

III. Jurisdiction

IV. Notice

V. Discussion

A. Application (Order of Referral Issue No. 1)

B. Need (Order of Referral Issue No.2)

1. **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)?**

   a. **How does the proposed facility support the reliability and adequacy of the interconnected transmission system?**

   b. **Does the proposed facility facilitate robust wholesale competition?**

   c. **What recommendation, if any, has an independent organization, as defined in PURA §39.151, made regarding the proposed facility?**

   d. **Is the proposed facility needed to interconnect a new transmission service customer?**

2. **Is the transmission Project the better option to meet this need when compared to employing distribution facilities? If LCRA TSC is not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency? (Order of Referral Issue No. 3)**

[22] Tr. at 855.

C. Routing

1. Which proposed transmission line route is the best alternative, weighing the factors in PURA §37.056(c) and P.U.C. SUBST. R. 25.101 (b)(3)(B)? (Order of Referral Issue No. 4)

a. Adequacy of existing service and need for additional service.

b. The effect of granting the certificate on LCRA TSC and any electric utility serving the proximate area.

c. Community Values

CTEC's input to the endpoint choice is misrepresented by JLPA

JLPA's position with regard to CTEC's participation in potential substation siting appears determined to represent that CTEC was railroaded into accepting substation site 9 as part of LCRA TSC's decision to identify Route 17 as the one it believes best addresses the PURA and PUC Subst. Rule criteria. JLPA emphasizes that CTEC was not involved in LCRA TSC's decision to recommend Route 17,[23] but that was not significant at all because (as actually explained in the cited testimony) '[t]hey had indicated that any of the substation sites would work fine for their use."[24] JLPA is not content with advocating a rejection of Route 17 based on a number of objective measurements and differences that CTEC and LCRA TSC readily acknowledge (such as the one that there are higher distribution costs associated with Jenschke Lane sites and one Luckenbach Road substation site than Luckenbach Road substation sites 1-5); instead, it insists on insinuation of a fault in the routing process that would have the ALJs believe CTEC's input was ignored. Nothing could be further from the truth. Mr. Peterson of CTEC has made it clear multiple times that CTEC reviewed all nine substation locations and found them all acceptable.[25] Any cross-examination of Mr. Peterson during his two appearances as a witness about any lingering concerns he might have had about the routing process is conspicuously absent from JLPA's case.[26] If there is merit to considering the differences in distribu-

[23] JLPA Brief at 32.
[24] Tr. 226.
[25] *See e.g.* LCRA TSC Ex. 17, Peterson Rebuttal Test. at 5.
[26] *See* Tr. of Weds. 5/27 213-244 *and* Fri. 5/29 788-804.

tion costs between route choices,[27] then that comparison is proper based on numbers, not innuendo.

d. Recreational and Parks Areas

e. Historical and Aesthetic Values

i. Aesthetic Values

ii. Historical Values

Alleged Archeological Site on Ryan Property

1888 SBA claims in its Brief[28] that an "archeological site" on member Patricia Ryan's property was ignored by LCRA TSC. To the contrary, Ms. Ryan provided no facts in her testimony to provide any minimum threshold for this to be considered an archeological site at all, let alone one which is comparable to those documented for comparative purposes in the Environmental Assessment.[29] Assertions by a non-expert witness on this type of "site" do not constitute sufficient evidence to raise an issue.

f. Environmental Integrity

(Responding to Staff, TPWD, Katherine Peake, Wilson Farmer Families, Hershey Ranch, Chris Hale, and 1888 SBA)

Conservation Easements.

There are two conservation easements in this case, the Hill Country Land Trust conservation easement on the Hershey Ranch and the Nature Conservancy conservation easement on property owned by Mr. Hale. Hill Country Land Trust intervened; Nature Conservancy did not. Both landowners subject to these conservation easements seek special protection in this case, though they address the issues in slightly different ways. The Hershey Ranch is bolder in making its case for exclusion from consideration for routing options.[30] Before this case was filed Ms. Katherine Peake, speaking for the Her-

[27] LCRA TSC has provided relevant information on this point in the CCN Application, and has indicated it is up to the Commission on whether to take that factor into account and how ultimately to weight that evidence. *See* LCRA TSC's Response to Steve McAnally's Objections to the Direct Testimony of David Peterson at 5-7 (February 10, 2015) (Interchange Item No. 226), relied upon in SOAH Order No. 4 (March 10, 2015), overruling objections.

[28] 1888 SBA Brief (July 1, 2015) at 11.

[29] *See* LCRA TSC Ex. 1 Application Attachment 1 (EA) at pp. 2-61 through 2-66.

[30] Peake Initial Brief at 10, ("1. Land with conservation easements should be avoided."); Tr. at 468 (Mr. Lindemann (On behalf of Hershey Ranch): "I think that the – the conservation easement – or the conservation values of the conservation easement should – should be honored as stated in the conservation ease-

shey Ranch, wrote LCRA's General Manager, Mr. Phil Wilson, and attempted to have LCRA staff avoid the ranch with any proposed routes.[31] For the same reasons articulated by LCRA TSC in this case, Mr. Wilson respectfully declined Ms. Peake's request and encouraged the Hershey Ranch to intervene and make its case directly, which the Hershey Ranch has done.

In testimony, Mr. Hale and 1888 SBA take a more nuanced approach, though the result is the same; namely, they want Mr. Hale's property avoided by Segment X because it is covered by a conservation easement. Not coincidentally, Mr. Hale and 1888 SBA address in a more detailed, point-by-point manner many of the factors that would otherwise be considered separately under the category of "environmental integrity" in an effort to distinguish Mr. Hale's conservation easement from the one on the Hershey Ranch. That is, in testimony and in brief Mr. Hale seeks to accomplish in a piecemeal, subtle fashion what Hershey Ranch seeks to accomplish with a more unabashed, broad-brush approach. Mr. Hale also tacks on an additional reason why his property should be excluded from consideration for any routes. That issue was raised in his cross rebuttal testimony and consists of the notion that his conservation easement is a "plus more" conservation easement that not only considers preserving environmental factors on his own property, *per se*, but also requires him to protect "...the public's views along FM 1888 in perpetuity."[32]

Mr. Hale also attempts to distance himself from the Hershey Ranch by refusing to accept the so-called "favor" bestowed on him and the Hershey Ranch by Staff, TPWD, and a host of other parties favoring Route 17Y.[33] That "favor" is the recommendation that conservation easements should be avoided under some self-assumed notion of public good, particularly Segment Y, which is part of Route 17Y. As a result, Route 17Y (unlike Route 17) misses Mr. Hale and his conservation easement. Problem solved. However, Mr. Hale, in solidarity with his neighbors on FM 1888, seeks to refuse this "favor"

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ment."); Tr. at 470 (Q: "And when you say 'respected,' you mean that the transmission line not cross the property that has a conservation easement." A: (Mr. Lindemann) "That is correct.").

[31] *See*, Attachment A at 1, ("We request that LCRA, in this and future cases, weigh conservation easements as a factor in routing transmission lines. We also ask that LCRA reconsider the routes for this proposed transmission lines (sic) and avoid ALL conservation easements.") (Emphasis in original).

[32] 1888 SBA Initial Brief at 34.

[33] *Id.* at 30.

because it raises the unavoidable specter that his spirited advocacy for his conservation easement may have put his neighbors at greater risk of having the line placed on them – an unintended consequence pointed out by LCRA TSC witness, Rob Reid, in his rebuttal testimony.[34] Unfortunately (or fortunately for a successful landowner), because conservation easements are not considered constraints under PURA §37.056 or the Commission's applicable Substantive Rule, §25.101(b)(3)(B)(iii), strong and successful advocacy on behalf of automatic exclusion (Hershey Ranch), or a more nuanced exclusionary advocacy based on a case-by-case discussion of applicable environmental integrity factors (Mr. Hale), can lead to added interest being given to neighboring landowners who are then more apt to fall victim to the application of the statutory or regulatory criteria and have the Commission approve a transmission line on them.

The situation definitely causes a dilemma for conscientious landowners who granted conservation easements on the assumption they were doing something altruistic but now find themselves in the position of inadvertently creating a situation where they push a transmission line onto their neighbors. There are other reasons to be sure why landowners may grant a conservation easement – tax breaks and tax benefits, which are perfectly good reasons on which to base a private transaction with a qualified entity, such as the Hill Country Land Trust or the Nature Conservancy. LCRA TSC is in no way casting aspersions on landowners who choose to grant a conservation easement on his or her property, but is simply raising the point to ensure that the ALJs and the Commission consider that not every conservation easement is based on the same foundation, and granting conservation easements special protection from consideration in a transmission line case will cause other landowners to assume a greater risk of having the line placed on them.

[34] LCRA TSC Ex. 13, Reid Rebuttal Test. at 27 ("They are typically private arrangements between the landowner and the entity to which the conservation easement is granted. In addition, the Commission should consider that, to the extent owners of conservation easements argue for the automatic or near-automatic exclusion of their properties from consideration for infrastructure improvements, they immediately put private properties owned by their neighbors (who have not granted conservation easements) at greater risk of having the infrastructure constructed on their properties, despite the fact that the neighbors may be no less conscientious land stewards than the person granting the conservation easement."). *See, also,* Tr. 757-759.

In this case LCRA TSC treated all landowners equally and did not avoid land burdened with a conservation easement.[35] LCRA TSC believes that if the Commission chooses any route that crosses property encumbered with a conservation easement LCRA TSC can successfully condemn the property, if necessary, to construct the transmission line if an easement cannot be negotiated with the landowner. Indeed, both Hershey Ranch and Mr. Hale acknowledge that they can be condemned if the Commission approves a route on either of their properties.[36]

Aside from whether either one or both of the conservations easements should be given special consideration, the fact of the matter is that both properties burdened with a conservation easement score favorably when compared against the statutory and regulatory criteria with which LCRA TSC must comply in putting together a CCN application. Mr. Wenmohs pointed out in his rebuttal testimony that, "In the case of the Hale property, Segment X parallels an existing TxDOT highway (RR 1888, a compatible ROW) and the northern boundary of the property, both of which are routing criteria contained in the PUC's Substantive Rules. In fact, the Hale Property already contains a 138-kV electric transmission line (T342)...."[37] Likewise, with respect to the Hershey Ranch, Mr. Wenmohs pointed out that, "In the case of the route segments crossing the Hershey Ranch, those segments for the most part (with exception of about 1,800 ft. of Segment B1) follow Hershey Ranch Road, *an abandoned pipeline corridor (an existing linear corridor/cultural feature, which is largely devoid of trees)*, fence lines and property lines,

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[35] Indeed, in the same vein, though a slight digression here, it is important to point out that data gathering and dissemination is organized by LCRA TSC so as to screen POWER from the names of parcel owners when POWER begins its initial routing study. That is to avoid criticism leveled at CCN applicants in the past that they purposely avoided celebrities or political figures or other "VIPs" with their routes and segments. By NOT knowing the names of the property parcel owners over whose properties POWER suggests preliminary routing segments, LCRA TSC and POWER go the extra mile to ensure that all property owners and all properties are treated equally. That sometimes has the effect of angering persons who believe they should receive certain types of consideration in advance of public routing determinations, but LCRA TSC believes the better practice is to insist that all affected landowners or interested parties participate in the contested case process and make their respective cases in public.

[36] *See*, TPWD Initial Brief at 3; Hershey Ranch Initial Brief at 6 ("While conservation easements do not present a legal prohibition against construction of a transmission line, they should be avoided by transmission line infrastructure, if at all possible."); 1888 SBA Initial Brief at 30, 32 (acknowledging Mr. Reid's testimony that there is nothing in the Commission's rules that automatically removes a property burdened with a conservation easement from consideration for a transmission line).

[37] LCRA TSC Ex. 9, Wenmohs Rebuttal Test. at 11.

which are all routing criteria contained within the PUC's rules."[38] (Emphasis added). Continuing, Mr. Wenmohs also noted that, "...while the Hershey Ranch for many years contained a pipeline, indicating conservation easements and public utility infrastructure and associated easements (i.e., transmission lines and pipelines) are compatible and can coexist on the same property."[39] In both cases, LCRA TSC believed (and still believes) that they are good routing opportunities for routing a transmission line, based on the routing criteria that it and every other transmission service provider must address in a CCN application.

Much was made on cross examination about the abandoned pipeline easement on the Hershey Ranch, and whether or not LCRA TSC should have considered it a routing corridor because it was not an (existing) pipeline ROW and, therefore, not strictly "compatible ROW" within the meaning of PUC Subst. R. §25.101(b)(3)(B)(ii). That is, if the pipeline ROW was abandoned it was no longer "ROW," and hence outside the ambit of the term as used in the substantive rule that outlines the regulatory routing criteria.[40]

The specific question posed by counsel to Mr. Wenmohs was, "And do PUC rules or PURA contain an exception for *abandoned* right-of-ways?" (Emphasis added). While a reasonable question to ask on cross-examination, in reality, the notion implicit in the question results in a crabbed and illogical way to route a transmission line. In response to the question Mr. Wenmohs correctly noted that, "They don't, but they include things like cultural features, which this pipeline would be."[41] Mr. Wenmohs is correct on all counts.[42]

As further cross-examination brought out, the area encompassed by the abandoned pipeline easement on the Hershey Ranch can still be seen, and was further characterized as a "scar" on the landscape.[43] In fact, the so-called scar cannot only be seen on the Hershey Ranch, but on properties outside the Hershey Ranch, indicating that the terrain has not yet "healed over."[44] While the terrain may grow over and heal in time, the

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[38] *Id.* at 10, 11.
[39] *Id.* at 11.
[40] Tr. at 742.
[41] *Id.*
[42] *See,* LCRA TSC Ex. 9, Wenmohs Rebuttal Test. at 11-13.
[43] Tr. at 608.
[44] *Id.* 616-618.

fact of the matter is that in this case, the Hershey Ranch chose to dig up the pipeline, exacerbating the "scar" by re-fragmenting land that was in the process of growing over, and in the process creating or maintaining a linear/cultural feature. Under the requirements of the Commission's routing criteria, LCRA TSC would have been remiss had it ignored this linear/cultural feature and not presented it as a routing opportunity to the Commission, as per the directions in the routing criteria that direct CCN applicants to consider paralleling "...natural or cultural features..."[45]

Understandably, the prospect of having a transmission line approved across its conservation easement is troubling to the Hershey Ranch. However, in transmission line CCN cases the ALJs and the Commission are called upon to make difficult choices in balancing the statutory and regulatory criteria in a manner that accomplishes the purposes of the CCN application while addressing the public interest, as it may be defined by the Commission in any given case. Here, Routes 16/16-Modified (among others) cross the Hershey Ranch but do so by traversing for much of their distance along abandoned pipeline ROW that is an existing linear/cultural feature. To the extent a route is approved along the abandoned pipeline on the Hershey Ranch, then that is less fresh ROW (and possibly accompanying fresh fragmentation) that would otherwise have to be taken at another location. It may actually minimize the amount of overall fragmentation resulting from construction of the transmission line. In addition, using construction techniques that would allow LCRA TSC to narrow the ROW, it would be possible to ameliorate the more drastic effects that Hershey Ranch paints in its testimony and Initial Brief.

In that regard, Ms. Melendez, LCRA TSC's transmission engineer on this project, testified that LCRA TSC could use a vertical configuration to narrow the ROW:

Q: When you get into detailed design of the line, are there techniques you can use to narrow the right-of-way, if necessary?

A: (Melendez): There are – it was 37 feet –

Q: Okay. I'm sorry.

A: (Melendez): -- from the centerline. Okay. There are techniques that we can use, because the easement width is a function of many things, one of

[45] Comm. Subst. R. §25.101(b)(3)(B)(ii).

> which is span length, which we discussed a couple days ago. Another way that you can minimize the right-of-way width is to use a different type of monopole structure, which would be – it's a *vertical configuration monopole structure.* So your typical tangent structure is what we call a delta. It's shown in the EA in Figures 1-1, I believe. It has two conductors on one side and one conductor on the other, so it's wider. If you're attempting to minimize the right-of-way width, you can use this vertical configuration structure, which, essentially, rather than having two conductors on one side and one conductor on the other, all of your conductors are on the same side of the structure. And so when your wires are displaced under various weather conditions and various wind conditions, rather than having your wires start from a wider position and blow out, they start from a narrower position, that vertical configuration, and blow out, which means they blow out less, and so you're able to minimize the right-of-way.[46] (Emphasis added).

In short, if the Commission chooses to place the transmission line on Route 16/16-Modified across the Hershey Ranch and across the conservation easement, LCRA TSC can construct the line in a way to minimize any additional ROW it may need to construct the line in and/or along the abandoned pipeline easement, an area which, the evidence shows, remains fragmented.

The Hale property, affected by Segment X, has also been presented as an exclusion zone by Mr. Hale and 1888 SBA, because of the conservation easement granted to the Nature Conservancy. As with the Hershey Ranch, LCRA TSC routed a segment, Segment X, on Mr. Hale's property because it comported favorably with the routing criteria as discussed by Mr. Wenmohs in his Rebuttal Testimony, and referred to above. In its Initial Brief 1888 SBA does a very commendable job of explaining why the Hershey Ranch should not qualify for an exemption from the statutory and regulatory routing criteria, and why it should be distinguished from the Hale conservation easement. That is understandable as 1888 SBA is very much interested in recommending Route 16/16-Modifed to the ALJs and the Commission. The strategic reason for taking that position and making these arguments in its Initial Brief is no less valid simply because the personal interests of the 1888 SBA intervenors are at stake. On its own merits Route 16/16-Modified is a worthy route that can be placed in the mix of available routes along with LCRA TSC's 20 routes and the other routes proposed by the intervenors, Routes 17/17Y,

[46] Tr. at 839-840.

and 11/11-Modified. However, the rationale 1888 SBA uses to argue that Mr. Hale's property is distinguishable from the Hershey Ranch is not as convincing.

As presented by 1888 SBA in its Initial Brief, it is clear that Mr. Hale's conservation easement ultimately requests the same consideration as the Hershey Ranch. However, it also presents a slightly different, more vexing issue for the Commission; a different issue that Mr. Reid in his Rebuttal Testimony characterized as one with a "particular twist."[47] That particular twist revolves around Mr. Hale's contention that his conservation easement "protects" *more* than his property, and not only is he concerned with the aesthetics and environmental integrity issues associated with his own property, but with the welfare, aesthetics, and environmental integrity along FM 1888. In all candor, that is a bridge too far for this case. While Mr. Hale may have agreed to such an expansive provision in the conservation easement he granted to the Nature Conservancy, and while he may have fulfilled the letter of that provision by attempting to safeguard the general aesthetics of the entire area along FM 1888 by raising the conservation easement issue here, the Commission is not bound by that provision.

Mr. Reid expressed the caution the Commission should exercise when considering not only the policy issue of extra protection for conservation easements, but the added "private attorney general" aspect of a private agreement between a landowner and another private party that purports to give the landowner some sort of enforcement power or ability to decide what is an appropriate level of development along a Texas FM road, even on property that does not belong to him. In describing the predicament in which Mr. Hale and 1888 SBA would put the Commission, Mr. Reid pointed out that:

> Mr. Hale is in essence not just claiming his easement should protect certain aspects of his property, but must be construed to protect the view of, on and near FM 1888 from a visual intrusion like a transmission line. From a land use policy standpoint, this places the ALJs and the Commission in a position where a single conservation easement along any given stretch of highway could be argued to disqualify the use of a parallel routing feature that the Commission has found on numerous occasions provides the best place to locate a transmission line.[48]

[47] LCRA TSC Ex. 13, Reid Rebuttal Test. at 18.
[48] *Id.* at 18-19.

Mr. Reid is correct. It is difficult enough to ascertain whether a conservation easement should be granted any special protection from the application of the statutory and regulatory routing criteria. Here, LCRA TSC took the position that the routing criteria apply irrespective of the existence of a conservation easement and treated all properties equally. However, under Mr. Hale's argument it would be virtually impossible for a transmission company or the Commission to determine when, if ever, paralleling a compatible ROW under the routing criteria may run afoul of someone's conservation easement when that conservation easement purportedly gives the grantor the power to decide: if his neighbor's decision to develop his or her property violates an easement to which he or she was not even a signatory; if his neighbor should be prohibited from allowing a 7-11 to build across the road from Mr. Hale; if his neighbor should be prohibited from allowing a billboard on the frontage of his or her property fronting on FM 1888 if Mr. Hale thinks it is unaesthetic; or if his neighbor should be enjoined from agreeing to have a transmission line routed onto his or her property? [49]

In summary, the idea that a conservation easement should be an automatic bar to routing a transmission line on someone's property, or even that a conservation easement should receive special protection from the application of the statutory or regulatory routing criteria, is a novel one for LCRA TSC and possibly the Commission. Mr. Reid testified that he recommended routing a transmission line across a conservation easement in construction related to a larger transmission project that included LCRA TSC's Kendall to Cagnon CCN case, PUC Docket No. 29684.[50] However, as he pointed out, that case concerned an LCRA TSC CCN case at the Commission connecting with a CPS Energy transmission line at the Kendall-Bexar county boundary. The conservation easement in question, Government Canyon, was on the CPS Energy side of the county line. As a result, the issue was not taken up in the LCRA TSC CCN case because CPS Energy did not need a CCN to construct its part of the project. Nonetheless, routing a transmission line through a conservation easement was the natural continuum to the CPS Energy side of

[49] It should be noted that several homes and barns have been constructed along and near FM 1888. It is not clear if Mr. Hale had to approve such construction as not violating his conservation easement provision to protect the FM 1888 viewshed.
[50] Tr. at 756-757.

the transmission line because CPS's line had to connect to LCRA TSC's part of the project.

Here, the issue is squarely before the Commission. While the decision is clearly up to the Commission, LCRA TSC suggests caution in appending a new interpretation to the Commission's routing criteria contained in Subst. R. § 25.101(b)(3)(B)(i)-(iii) outside the ambit of a rulemaking proceeding where an opportunity to provide comment can be provided to all potentially affected stakeholders. Moreover, that level of concern and caution is increased when the landowner and the party arguing for special consideration include an argument that they should not only be able to insist on special consideration for the property covered by the conservation easement itself, but along a FM road that meanders through the entire area. In this case, LCRA TSC believes all routes and all segments that traverse through any portion of the study area can be constructed, irrespective of the existence of the two conservation easements.

g. Probable Improvement of Service or Lowering of Cost to Consumers in the Area

h. Engineering constraints

(Response to JLPA Regarding Interference with VORTAC and Routing Consequences)

Because JLPA (like 1888 SBA) considered itself "in the crosshairs" of parties expressing support for Routes 17/17Y, it attempted to gin up an issue related to the Stonewall area VORTAC aviation signaling equipment as a way to deflect attention from Route 17/17Y to other routes not on or near Jenschke Lane, notably Routes 11/11-Modified. This resulted in a series of heatedly argued but partially retracted opinions, and ultimately a small remaining nugget of rank speculation that constitutes JLPA's position related to the VORTAC as it "affects" Routes 17/17Y. In contrast, LCRA TSC provided a thoroughly analyzed and factually supported series of analyses that leads to the clear conclusion that all routes are feasible and no segment on Routes 17/17Y presents an FAA/aviation related feasibility problem.[51]

[51] LCRA TSC Ex. 11, Melendez Rebuttal Test. at 24-32; LCRA TSC Ex. 14, Pittman Rebuttal Test. at 8-12, 25.

To understand how JLPA's poorly executed issue withered away and why it should not have even been raised in the first place, consider the following events and the time frame in which they were conducted:

- LCRA TSC conducted a multi-step and increasingly more specific analysis of the engineering issues that might be needed to address routing near the VORTAC. This process began well before the CCN filing and concluded with results that were incorporated into the CCN Application analysis. LCRA TSC, POWER Engineers, and the experienced aviation consultant, Clyde Pittman of Federal Airways & Airspace (FA&A), all performed various tasks and analyses at various points of this process.[52]
- Pursuant to a discovery request, LCRA TSC provided all information related to its analysis of the VORTAC issue early in the CCN process when and where it could be reviewed by all interested persons.[53]
- Without reviewing the Application[54] or the full body of the voluminous support materials (i.e., relying upon a limited set of materials provided by the review of an assistant to a confessed non-aviation expert[55]), Mr. Raymond Syms rendered an opinion on April 6, 2015 in direct testimony that certain of LCRA TSC's routing segments on Route 17 presented potential VORTAC interference issues.[56]
- Following LCRA TSC's rebuttal of May 22, 2015, on May 27, 2015, Mr. Syms retracted his opinion that portions of LCRA TSC's Route 17 violated one of two FAA criteria.[57] Syms maintained his opinion that LCRA TSC's proposal violated one remaining criterion,[58] the so-called "0.5 degree" criterion.

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[52] *See* sequence of events described in LCRA TSC Ex. 11, Melendez Rebuttal Test. at 24-26 *and* description of analysis in LCRA TSC Ex. 14, Pittman Rebuttal Test. at 8-10.
[53] LCRA TSC Ex. 11, Melendez Rebuttal Test. at 31.
[54] Tr. 642.
[55] Tr. 645-646, 641, 642 (reliance on others); Tr. 655, 665; JLPA Ex. 1, Kuhl Direct Test. at 16. (non-aviation expert)
[56] JLPA Ex. 2, Syms' Direct Testimony.
[57] JLPA Ex. 2A, Errata to the Direct Testimony of Raymond Syms, conceded that there was no proposed route segments that violate the FAA's 1.5 degree VORTAC interference criterion.
[58] *See id.* at Ex. 2 and 2A.

What led to this state of affairs? An uninformed, hastily performed analysis lacking in credibility for multiple reasons:

- By his own admission, Mr. Syms did not read the Application.[59] As a result, he did not even realize that some of the routing segments he depicted in his direct testimony had not been the operative ones as a result of revisions made before the filing of the Application.[60] Such negligent inattention is below the standard of care that should be expected of any witness, particularly one who professes to testify as an expert.
- Mr. Syms did not review what LCRA TSC provided for examination of all parties; as a consequence, he learned two days before his testimony was admitted at hearing that there were additional relevant materials he had not reviewed.[61]
- Even when he realized the existence of additional documentation, Mr. Syms did not examine it directly. Instead, he simply revised assumed numbers and re-ran his exhibits.[62] His belief that "to look further at what they [LCRA TSC] had done would not have been of any value[63] "exhibits reckless disregard, particularly since at least some of the materials he failed to examine before he rendered his initial opinions caused him to change some of those opinions.
- Mr. Syms relied upon hearsay statements that the FAA would *review notice* criteria related to any VORTAC issues,[64] hardly a basis for sound, purportedly expert, conclusions.[65] This resulted in a failure to recognize both the irrelevance of the notice criteria to this stage of analysis and the

[59] Tr. at 642.
[60] Tr. 642, 641.
[61] Tr. 637. Even this admission provides further evidence of Mr. Syms' inattention. The statement would fix Mr. Syms' knowledge on May 26; however, this implies that he was not aware of the documents referenced and exhibits provided that contradicted his opinions that may be found in the Cross-Rebuttal Testimony of Mr. William Griffin, Luckenbach Alliance Ex. 5, filed on May 5, 2015, three weeks earlier.
[62] *Id.*
[63] Tr. 638.
[64] Tr. 639, 647.
[65] Tr. 648.

actual *application* of the FAA criteria by the agency.[66] Mr. Syms ignored the analysis of the very type of expert (i.e, Mr. Pittman) he believed LCRA TSC should have relied on.[67]

- Mr. Syms misapplied the guidance of FAA Order 7400.2K and persisted in a crabbed reading of FAA Order 6820.10[68] despite seeing the more informed opinion of Mr. Pittman.
- Mr. Syms persisted in offering opinions that were unrealistic in claiming that FAA requirements might cause significant cost increases in Route 17. Despite being presented with facts that showed that such claims were not reasonable,[69] Mr. Syms continued to offer those opinions.
- In a critical analysis utilizing elevations that formed the foundation for his (remaining) opinion, Mr. Syms utilized an imprecise tool (i.e., Google Earth) for determining elevation data.[70] This renders his height-based conclusions suspect at best and highly likely to be faulty.[71]

Having suffered from a complete credibility collapse of its aviation witness and desperate to denigrate Route 17, in its Initial Brief JLPA continues to rely on these discredited assumptions and overextends the purported evidence on engineering constraints.

Particular "Disproportionate impact claims" on JLPA landowners

JLPA argues that its members suffer disproportionate impact because further routing adjustments could not be made on their property. However, from an examination of the intervenor map, it is obvious that links S, T, and V as they impact JLPA members (and the adjacent Nielsens) are along tract/property boundaries in all areas except in locations on the Jenschke and Fosbury properties,[72] hardly the overblown claims of "many cases" where routing adjustments to "Jenschke Lane residents" are supposedly prohibited.

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[66] *See* LCRA TSC Ex. 14, Pittman Rebuttal Test. at 20-21, 17-18.
[67] *See id.* at 12.
[68] *Id.* at 18-19, 16-18.
[69] *Id.* at 23-25.
[70] *Id.* at 21-22.
[71] *Id.* at 21.
[72] LCRA TSC Ex. 18, *see* properties V-001 through 005, T-001, 003 and 004, S-001 through 4 along segments S, T and V.

Even one of JLPA's only two examples illustrates its stretching of the evidence. JLPA says it is unclear that adjustments could be made on the Fosbury property, possibly because of concerns about VORTAC interference.[73] JLPA's claims of being unable to move on the Fosbury property because of the "potential" VORTAC interference is based on LCRA TSC engineers' statement that the matter of a relocation had not been studied and that it was "possible."[74] Eliciting this speculative "possible" was key to JLPA's strategy, because its own witnesses' testimony showed that an adjustment on Mr. Fosbury's property would not "interfere with the VORTAC."[75] JLPA did not set forth a landowner-formulated routing adjustment at this location. JLPA chose not to attempt to mitigate supposed impacts in the hope that those impacts would appear onerous enough to form part of a basis to deny use of Route 17.[76] JLPA should not be rewarded for "laying behind the log" in order to avoid the Commission's clear invitation in the Preliminary Order to propose adjustments and the ALJs specific admonition to bring forth evidence on that issue.[77]

The claims of "disproportionate impact" because of an inability to adjust Route 17 simply do not ring true. Engineering constraints can be of various types and have occurred elsewhere in the project area.[78] JLPA's members are being treated no differently than any landowner: a suggested adjustment may not be acceptable if there is an engineering constraint. In point of fact, the constraints on Route 17 are minimal and do not

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[73] JLPA Brief at 5.

[74] Tr. at 791.

[75] Please compare the illustration on JLPA Brief p. 5 with JLPA Ex. 2A (Syms Errata) at Exh. K. The "notch" following the black property line in the southwest/south central portion of the Fosbury property shown in the JLPA Brief p. 5 clearly falls within the "acceptable" area on Exhibit K (just southwest of the corner of link S on the Fosbury property) even if the 0.5 degree criterion were applied. While LCRA TSC believes the ALJs should not assign *any* credibility to Mr. Syms' testimony at this point in time, JLPA should not be permitted to simultaneously advocate for the credibility of that testimony and deny that testimony's demonstration that an adjustment on the Fosbury property was not prevented by a VORTAC-related issue.

[76] JLPA alleges that "a large portion" of the Fosbury property would be "completely unusable" (JLPA Brief at 15), while the JLPA member Fosbury's testimony makes no such claim. According to the landowner, Segment S purportedly "bisect[s]" a yet to be developed "vineyard," which is the type of land use LCRA TSC has demonstrated is compatible with the presence of a transmission line. *See* Reid Rebuttal Testimony, LCRA TSC Ex. 13 at 7 and Ex. RRR-1R.

[77] *See* PUC Order of Referral and Preliminary Order at 4, Questions 4 and 5; SOAH Order No. 2 at 8. Fosbury did propose an alternative substation location on his property, but one which was not feasible. *See* LCRA TSC Ex. 17, Peterson Rebuttal Test. at 6; LCRA TSC Ex.13, Reid Rebuttal Test. at 23.

[78] As an example, in one of the very exhibits JLPA relies on (JLPA Ex. 19) discuss an adjustment that was necessary on segment O due to an engineering constraint (the topography of a particular hill).

present a significant factor in rejecting Route 17. The impacts of Route 17 should be simply considered on a comparison basis and no one should receive special recognition because of impacts.

The VORTAC

With the credibility of their expert to interpret Orders of the FAA severely compromised,[79] JLPA resorts to a "strict reading" interpretation standard of an FAA Order as a flag of convenience and piles on additional false premises to sweep toward an ultimately erroneous conclusion about potential interference with the VORTAC, to wit:

1) a 1200 foot limitation to the 0.5 degree criterion is not found in FAA Order 6820.10;
2) therefore, the 0.5 degree criterion must apply to at least two nautical miles distance from the VORTAC; and
3) there is risk that the FAA would allege there could be interference with the VORTAC,
4) which risk could result in infeasibility of certain line segments or, at the very least, additional costs that would make other routes less expensive or more equal to Route 17.

Those premises and conclusion should be given no more credibility than Mr. Syms' prior assertions, because:

1) Based upon the direct knowledge and extensive experience of LCRA TSC witness Pittman with applying the FAA's Orders (the very type of expert experience JLPA's witness admits should be used),[80] the applicability of the 0.5 degree criterion is limited to 1200 feet from the VOR. This conclusion is derived from extensive and continuing experience with the FAA;[81] experience Mr. Pittman has and Mr. Syms does not. The JLPA claim that the 0.5 degree criterion is not limited by explicit words in the FAA's Order 6820.10 is a classic "strawman"; such a limitation is not necessary because outside of 1200 feet, the requirement to apply that criterion is no longer necessary.[82] As explained in further detail at the hearing, this is based on the concept that necessary pow-

[79] *See* pp. 26-28 and fn. 52-71 above.
[80] *See* Syms Direct Testimony at 7.
[81] LCRA TSC Ex. 14, Pittman Rebuttal Test. at 16-17.
[82] *Id.*

er and control lines running to the VORTAC must be properly positioned in the 1200 foot range to lower the probability of reflectivity disrupting signals.[83] Mr. Pittman further illustrated the FAA's *application* of 0.5 degree criterion to 1200 feet with JLPA Exhibit 22, which he produced in discovery. The diagram illustrates a long-existing interpretation by FAA technical personnel of the limited applicability (1200 feet from the VORTAC) of the 0.5 degree criterion.[84]

2) JLPA has overreached in an attempt to apply the 0.5 degree criterion out to two nautical miles, and LCRA TSC has demonstrated how JLPA continues to grasp at straws by attempting to apply a *notice* tool as an *operational* standard, which is entirely inappropriate and irrelevant to actual VORTAC operational matters.[85] In fact, it is so irrelevant as to be misleading.[86] LCRA TSC witness Pittman, with extensive FAA managerial and operational experience *in this very field*,[87] has demonstrated the *application* of FAA standards through several examples. Mr. Pittman has shown that the 1200 foot criterion itself is not even absolute and that transmission lines can and do operate within 2 nautical miles of a VORTAC without signal interference.[88] In its Initial Brief JLPA clings desperately to this theory that a notice criterion has operational and decision-making consequences because JLPA has been forced to concede that, its witnesses' analysis on other VORTAC issues was uninformed and ultimately faulty.[89] This theory is all they have. And it has been proved to be nothing more than rank speculation in light of the specific and informed expert opinion of Mr. Pittman, who has been involved extensively with both *operational* aspects of these issues and this project.

3) The JLPA strawman of the "risk" of Route 17 is an illusion. LCRA TSC has illustrated how the FAA's criteria are *applied*. LCRA TSC has provided both a prac-

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[83] Tr. at 786-87, 848-49.
[84] See Tr. 803, 846-47.
[85] LCRA TSC Ex. 14, Pittman Rebuttal Test. at 20-21 *and* Tr. 845.
[86] *Id.* at 21 *and* Tr. 845.
[87] *Compare* LCRA TSC Ex. 14, Pittman Rebuttal Test. at 3-4 *and* CJP-1R (Pittman's extensive aviation signaling experience) *with* Tr. 652 (Syms' examination of only 2 VORTAC facilities and no experience with examining power and control lines). In the final analysis, the opinions presented by Mr. Syms lacked the expert foundation to be relied upon in this case. They should receive no weight whatsoever. *See* LCRA TSC Ex. 14, Pittman Rebuttal Test. at 13.
[88] LCRA TSC Ex. 14, Pittman Rebuttal Test. at 17-18 *and* Tr. 847-48.
[89] *See* JLPA Ex. 2A, Syms Errata, Exh. J, demonstrating that no proposed segments violate the FAA's 1.5 degree VORTAC interference criterion.

tical study of facts backed up by competent engineering analysis, and highly qualified expert opinion. LCRA TSC has demonstrated through concrete examples how the FAA's criteria are interpreted. As Mr. Pittman stated unequivocally "**That's how it's done.**"[90] JLPA has demonstrated nothing – particularly no facts suggesting that the Stonewall VORTAC site is so different from other VORTACs that the FAA would somehow analyze it differently and reach conclusions other than what LCRA TSC has demonstrated. JLPA witness Kuhl, an admitted non-expert on aviation matters, relies as much or more as Mr. Syms on unqualified, uninformed and exaggerated readings of FAA Orders and superseded scenarios to claim "risk." JLPA's unqualified and undocumented speculation does not equal "risk." Neither does it constitute probative evidence on which to base any conclusion.

4) LCRA TSC has shown the "risk" of potentially higher costs on route segments on Route 17 to be groundless. JLPA jumped on a discussion of an early "worse case" scenario for increased costs discussed in an earlier, superseded memo from January 2014 and clings to it despite LCRA TSC's demonstration that it has no basis in fact, reasonable agency (FAA) approach, or VORTAC operation.[91]

There is simply "nothing left to see" on the VORTAC issue. JLPA raised an issue that has no basis other than sheer speculation, but the issue splashed up against a concrete wall of facts that were specifically documented and well-grounded in theory and analysis. The speculation on which JLPA continues to base its position is palpably false and should be put to rest. There is simply no basis for thinking that LCRA TSC has taken, or is taking, an "act now and ask forgiveness later"[92] approach, as speciously claimed in JLPA's Initial Brief. Based on the record evidence produced by LCRA TSC (and Friends' and Luckenbach's Mr. Griffin), JLPA's assertion is patently absurd.

Purported Restrictions on Land Use

JLPA has overreached in its claim that H-frame structures will place a greater burden on landowners because of minimum ground clearance requirements.[93] This is in

[90] Tr. 857.
[91] LCRA TSC Ex. 14, Pittman Rebuttal Test. at 23-25.
[92] JLPA Brief at 19.
[93] JLPA Brief at 14.

part premised on the notion that lower clearances exist on H-frame structures,[94] which is not what LCRA TSC in fact testified to. LCRA TSC engineering witness Melendez indicated that the bottom conductor height *for all structure types* would be the minimum height based on ground clearance,[95] in a different discussion than that cited by JLPA.[96] And LCRA TSC does not concede that use of lower height H-frame towers may increase the number of structures on a landowner's property.[97] The discussion cited by JLPA does not contain any specific evidence or admission that (with minimum clearances for all structure types being the same) one type of structure would burden landowners more when attempting to pass under a conductor at any location.[98]

i. Costs

(Response to 1888 SBA)

Estimated Easement Acquisition Costs.

1888 SBA was the only group to actively question LCRA TSC's proposed segment and route cost estimates, particularly the ROW acquisition cost estimates associated with Route 17/17Y. This is understandable because, strategically, it is necessary for 1888 SBA to denigrate Route 17/17Y because it is the cheapest proposed route. By arguing that LCRA TSC's estimated route costs are inaccurate 1888 SBA can then argue that the estimated cost for Route 17/17Y is too low, thereby making it worse by comparison with other routes, such as Routes 11/11-Modified and 16/16-Modified. Understandable, but wrong.

The problem with 1888 SBA's approach has been apparent for some time. In April 2015 LCRA TSC filed a general Motion to Strike portions of the testimonies of various witnesses. With respect to 1888 SBA, LCRA TSC was concerned that the testi-

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[94] *Id.*

[95] Tr. 235-36. This is consistent with LCRA TSC's use of the same minimum ground clearance across structure types for other purposes. *See for example,* LCRA TSC Ex. 5, Melendez Direct Test. at 6 (EMF calculations)

[96] *See* JLPA Brief at fn. 69.

[97] *See* Tr. 235 "...they're around the same span." The lowest conductor on a single pole structure would be the same height as the three conductors on an H-frame structure at the same location and with the same land use, meaning the spans would be "about the same" to provide the same clearance. Tr. 235-236.

[98] Ground clearances are based on land uses. Tr. 231. Thus, if a landowner were utilizing "tall equipment" where LCRA TSC's ROW is on agricultural land, the landowner would be subject to the same minimum clearances for either structure type. H-frame structures are no more limiting than properly-sized monopoles in the same location.

mony was creeping into territory prohibited by the Order of Referral, and simply requested an instruction that 1888 SBA's witnesses' statements regarding their perceived value for their properties be limited to a "legitimate statement of concern by intervenors, but not as evidence upon which to base a recommendation to the PUC regarding placement of the line."[99] LCRA TSC has filed more detailed motions to strike in past cases but it has become apparent that SOAH ALJs are reluctant to strike testimonies or portions thereof unless they contain egregious violations of some rule of evidence. Usually, the ALJs simply give the testimony the weight it deserves.

That being the case, LCRA TSC chose to file a limited motion to strike rather than burden the record and impose on the ALJs' time. At the very least LCRA TSC sought to emphasize the Commission's admonition in its Order or Referral and Preliminary Order that the single issue NOT to be addressed in this case was:

1. What is the appropriate compensation for right-or-way or condemnation of property?[100]

The Commission further stated that the reason this issue was off the table was because, "The Commission does not have the authority to adjudicate or set the amount of compensation for right of way or for condemnation."[101] The reason LCRA TSC expressed concern was because it appeared 1888 SBA seemed intent on challenging LCRA TSC's estimated route costs, particularly the estimated ROW acquisition costs, because they did not fully mirror in some form or fashion what the costs would be to acquire the affected properties *in condemnation.*

LCRA TSC's estimated easement acquisition costs, which form the basis of the estimated costs for the route segments that ultimately roll up into the estimated costs for any given route, are just that – estimates. These consistent estimates are based on information retrieved from the county tax appraisal districts in Gillespie, Kendall, and Blanco counties. The estimated easement acquisition costs are based on a methodology explained in detail in the rebuttal testimony of LCRA TSC engineer, Jessica Melendez.[102]

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[99] LCRA TSC Motion to Strike Direct Testimony of Intervenor Witnesses at 2, April 20, 2015, Interchange Item No. 411.
[100] Order of Referral and Preliminary Order at 5, December 10, 2014, Interchange Item No. 117.
[101] *Id.*
[102] LCRA TSC Ex. 11, Melendez Rebuttal Test. at 20-24.

There, Ms. Melendez explained that LCRA TSC used a methodology that provides a reasonable estimate of ROW acquisition costs that in no way is meant to mirror the property valuations that would be used in a condemnation proceeding. Rather, the method provides a consistent and uniform way to measure one segment and route against another based on a foundation of assessed tax values compiled by the governmental bodies whose job it is to acquire and manage such data – the county tax appraisal districts in whose counties the proposed transmission line might be constructed. As Ms. Melendez explained:

> The method used to *estimate* the average ROW cost per acre in this CCN case is the same model that was used for several recently approved LCRA TSC projects. LCRA TSC used tax appraisal district data to prepare the ROW acquisition cost estimates for the segments and routes in this case because LCRA TSC believes it appropriate to utilize *an accessible and verifiable valuation method for the limited purpose (and limited use) of comparing potential ROW acquisition costs.*[103] (Emphasis added).

The estimation model used by LCRA TSC in this case and several recent cases is not meant to mirror in any way what the *actual* costs to acquire the various properties might be in condemnation; it is a way to compare estimated easement acquisition costs for the sole purpose of comparing segments and routes in a CCN case. That being the case, it is entirely reasonable for LCRA TSC to use a valuation model based on the assessed values assigned to individual parcels by the county appraisal districts in whose counties the parcels are located. It is not based on market studies or individualized property assessments made by appraisers whose job it would be to note every element of a property's individual characteristics in order to squeeze as much money from the condemnor as possible in a condemnation proceeding. But, 1888 SBA persists in its efforts to inject property estimation concepts that are much more detailed and granular than allowed in a CCN proceeding. 1888 SBA continues its fight because it is in its best interest to do so as a way to argue that the estimated costs of easement acquisition for the parcels *owned only by 1888 SBA coalition members* are too low. The strategy is clear, but the criticism of LCRA TSC's methodology should be seen for what it is: a tactic used to question the basis of the estimated easement acquisition costs, but whose application (as

[103] *Id.* at 22.

advocated by 1888 SBA) would serve to benefit only the landowners who comprise the 1888 SBA coalition (or perhaps JLPA as well) because they could then argue that the estimated costs of Route 17/17Y are too low.

Despite protestations that it was not trying to litigate what the appropriate level of compensation might be in a condemnation proceeding,[104] 1888 SBA's criticisms of LCRA TSC's cost estimation methodology are, in essence, based on the sort of criticism a landowner would raise in a condemnation proceeding. For example, a landowner contesting the value of his or her property estimated by the utility in condemnation might complain that the utility had not taken into account the special circumstances associated with the parcels in question, such as a failure to account for the fact that one parcel might have road frontage while a comparable parcel used for comparison purposes might not. That was exactly what happened at the hearing where counsel for 1888 SBA conducted a long cross examination of LCRA TSC's engineer, Jessica Melendez, which did little but confirm the elements of LCRA TSC's cost estimation methodology.

In fact, the problem with 1888 SBA's criticism of LCRA TSC's cost estimation methodology is captured in the following quote from 1888 SBA's Initial Brief:

> Although LCRA's ROW Costs *are intended to match actual right-or-way costs that LCRA would incur in the condemnation phase* of LCRA's project, LCRA's current estimate *do not rely on condemnation-based appraisals or actual market data.*[105] (Emphasis added)

The problems with 1888 SBA's statement are many, but first among those is the assertion that LCRA TSC's cost estimation methodology "is intended to match actual right-of-way costs that LCRA (sic) would incur in the condemnation phase..." No, they are not. First, the Commission has stated that the issue of the appropriate compensation for ROW costs in condemnation is not an issue to be litigated here, so LCRA TSC did not attempt to "match" or litigate them.

Second, LCRA TSC's ROW cost estimation methodology is just that – a cost *estimation* methodology that attempts to assign an estimated cost of ROW acquisition based

[104] Tr. at 262, Counsel to Ms. Melendez: "And I think you acknowledge here – and, again, I'm not – I understand this is not a condemnation proceeding. You acknowledge that the estimates are not based on appraisals."
[105] 1888 SBA Initial Brief at 40.

on a consistent foundation that is, in turn, based on assessed valuation data taken from the county tax appraisal offices of the counties where the properties in question are located. It does not attempt to "match what the actual right-of-way costs" incurred in condemnation might be because no one knows what those costs may be until such time as they are either negotiated or litigated through the condemnation process.

Finally, LCRA TSC has asserted from the beginning of this process that it does not use "condemnation-based appraisals or actual market data" because this is not the time or the place to engage parties on those issues. Counsel for 1888 SBA are able condemnation attorneys who regularly litigate condemnation cases, including cases against LCRA TSC. However, they continue to persist in viewing this CCN case through the lens of condemnation counsel who reflexively try to assign a particularized and individualized market value to each and every property in question (or at least those properties in the 1888 SBA coalition). That is unrealistic and unreasonable, and flies in the face of the single admonition on the single issue on which the Commission instructed the parties not to engage.

LCRA TSC will not address every single complaint in 1888 SBA's Initial Brief, but will address some of the issues that form the basis of 1888 SBA's position. For example, at pages 41-42 of 1888 SBA's Initial Brief the group complains that one of the "flaws" in LCRA TSC's methodology is demonstrated by comparing similarly-sized segments. In this case, 1888 SBA compared A1, which forms part of Route 16/16 Modified and is located primarily in Gillespie County, with Segment W, which forms part of Routes 17/17Y and is located primarily in Kendall County. The difference of $111,680 in the estimated easement acquisition costs is a problem, contends 1888 SBA, because there are "panoramic home sites located along Segment W, as well as FM 1888 road frontage and the absence of such structures along Segment A1."[106] Is that a problem? No, it is not.

Differences between the two segments may exist because of parcel sizes, location or any number of factors. There is nothing sinister or strange here. Nevertheless, apparently 1888 SBA believes it was LCRA TSC's burden to initiate the type of market analy-

[106] 1888 SBA Initial Brief at 42.

sis and market studies normally undertaken in condemnation proceedings to conclude that the parcels belonging to the 1888 SBA coalition are, in their minds, more valuable (for condemnation purposes) than the properties along Segment A1, which is part of Routes 16/16-Modified.

Similarly, 1888 SBA complains that segments crossing two counties were assessed inconsistently because two county appraisal districts were involved leading a different valuation per acre under LCRA TSC's methodology. This, contends 1888 SBA, is another "flaw" that inures to their detriment. Essentially, 1888 SBA alleges the result is unfair because the majority of their parcels are located within Kendall County, which appears to assess similar properties differently than Gillespie and/or Blanco counties. LCRA TSC does not question the manner in which each county derived the assessed values for each parcel in their respective jurisdictions, it simply uses the assessed values from each appraisal district to assign a cost per acre to similarly-sized tracts in those counties. Again, there is nothing sinister here, it is simply the application of the methodology.

LCRA TSC does not believe either matter raised by 1888 SBA demonstrates a "flaw" in the methodology. It simply reflects reality that appraisal districts in different counties assess properties differently. It is analogous to observing that a Ford Fusion is priced differently in Austin than in Houston. Very well, so what? Those are realities that, in the case of a car, are based on the market in each city. With regard to properties in Gillespie, Kendall, and Blanco counties the differences are presumably functions of the tax revenue each appraisal district believes it needs to acquire from its citizens. 1888 SBA contends that, "Given the proximity of the Segments and individual parcels to each other, as shown in the map above, the differences in per acre ROW cost data should not have been so pronounced."[107] Again, it is not LCRA TSC's job to question, manipulate, or fiddle with the valuations assessed on properties within the jurisdiction of each appraisal district and it is reasonable for LCRA TSC to use those values to estimate easement acquisition costs, not for condemnation purposes, but simply to compare segments and routes within the study area.

[107] Id. at 43.

1888 SBA took issue with Ms. Melendez's observation that it seemed disingenuous and counter-intuitive for 1888 SBA to complain that in Kendall County its members' properties are under-valued for purposes of estimating easement acquisition costs. If that is the case, then Ms. Melendez suggested rhetorically, why aren't the 1888 SBA landowners calling the Kendall County Appraisal District to ask that their property taxes be raised to reflect the higher assessed values they apparently believe are correct? That observation prompted a spirited question/answer dialogue between Ms. Melendez and counsel for 1888 SBA, with the latter suggesting that Ms. Melendez's suggestion would not correct the so-called problem because LCRA TSC used neighboring tracts in the area, not just the tracts along the segment.[108]

However, Ms. Melendez's observation is still very germane. 1888 SBA landowners want it both ways; they like their low assessed values because those values result in lower taxes on a per/acre basis than if they lived in Gillespie County, which apparently assesses it properties higher on a per/acre basis then Kendall or Blanco counties. However, there is understandably no rush on the part of the 1888 SBA coalition members to race to the Kendall County Appraisal District to complain that their properties are under-assessed and they are being taxed too low.

As for the issue that LCRA TSC used neighboring similarly-sized tracts to calculate the average cost per acre in some instances, that is another red herring. It is correct that in some areas where there were an insufficient number of similarly-sized tracts to calculate an average cost per acre, LCRA TSC used similarly-sized, neighboring tracts *not* on the segment to derive a meaningful average cost per acre for the category (i.e., for 1-4 acre tracts, 5-10 acre tracts, etc.). Counsel for 1888 SBA argued with Ms. Melendez that asking an 1888 SBA member to run to the appraisal district to ask to have his or her appraisal raised would not "correct the problem" in this instance because the inclusion of the neighboring tracts would not improve (i.e., increase) the average cost per acre, which is 1888 SBA's goal.[109] That is incorrect. As Ms. Melendez pointed out, to the extent there are, for example, ten items used to derive an average and you increase the value of

[108] Tr. at 822-824.
[109] *Id.*

one property (in this instance it would the property on the segment in question), you will increase the overall average. It is simple math.

Perhaps the biggest fallacy in 1888 SBA's criticism is that it purports to demonstrate a "flaw" in LCRA TSC's methodology but then applies the result of that flaw only to its members in an effort to convince the ALJs and Commission to conclude that, "well, maybe cost isn't such a big deal" in this case after all. However, even if, *arguendo*, one chose to believe 1888 SBA was correct and LCRA TSC's methodology was "flawed," then the so-called flaw would apply to every property included in the routing analysis throughout the study area, not just to the members of 1888 SBA. As a result, the relative cost relationship between and among segments and routes would essentially remain the same.

Finally, 1888 SBA's last complaint on this issue is that LCRA TSC has only "tested" this methodology in one case, the Cushman CCN 138-kV transmission line case in Seguin (Docket No. 39479) and discovered that it "...was 28% off on its estimated right of way costs."[110] What 1888 SBA does not say is that LCRA TSC's estimated easement acquisition costs in the Cushman case were ultimately found to be 28% too high. That is, LCRA TSC ultimately paid less in acquisition costs than what it estimated. The fact that only one case has been taken through the process to completion is not surprising since these cases take many years to complete. As an example, LCRA TSC's final CREZ project, the McCamey D to Kendall 345-kV Transmission Project has been energized since 2013 but there are still cases being litigated in condemnation, as counsel for 1888 SBA well knows, because they are involved in at least one of those cases. It is not an infirmity to observe that LCRA TSC can only point to one case that has gone completely through the process of easement-cost estimation in a CCN docket to final condemnation cost adjudication for all affected properties. Nevertheless, one way to apply the lessons learned in the Cushman case might be to assume that all of LCRA TSC's estimated easement acquisition costs are approximately too high and apply a roughly 25% lower cost to all routes, in which case Route 17/17Y will be even less expensive.

[110] 1888 SBA Brief at at 44.

"Other" Costs.

The "Other" category is the LCRA TSC's designation for habitat mitigation costs. 1888 SBA complains that inclusion of $338,250 for Blacked Capped Vireo (BCV) mitigation costs for Segment H1 is unwarranted and unfairly increases the cost of Segment H1 (which is part of Route 16/16-Modified) as compared to Route 17/17Y on which no BCV mitigation costs were assigned.[111] As pointed out by Mr. Erik Huebner, LCRA TSC's environmental specialist, BCV habitat is more difficult to identify via aerial photography when compared to habitat for Golden Cheeked Warbler (GCW), the other endangered species considered. The basic fact is true enough, but as with its complaints about estimated easement acquisition costs, 1888 SBA demands a level of precision that does not, and will not, exist until such time as LCRA TSC representatives have "boots on the ground" and make actual visual inspections of the properties. In the meantime, Mr. Huebner is limited to what he can see on the aerial photography and what he can observe from observations from public vantage points. However, in order to provide an estimate of habitat mitigation costs, Mr. Huebner used the three habitat models conservatively to account for, in his professional capacity, the probability and impact of finding habitat for both species in the study area.

In that regard, 1888 SBA is correct that no dollars were included in the estimate of habitat mitigation costs for BCV, *per se*, for Route 17. However, there was money included in the cost estimate for Route 17 for GCW mitigation equal to $651,000. If, during Mr. Huebner's analysis of potential BCV he felt that an area had potential for BCV but that area had already been included in the estimate for GCW, then he did not also include that area in his estimated acreage for BCV because that would have been double-counting. LCRA TSC will not pay twice for mitigation costs for both GCW and BCV. It only pays once, and in that case, only if it is determined after consultation with USFWS that mitigation costs are appropriate at all. As a result, Mr. Huebner's analysis was consistent with LCRA TSC's conservative philosophy to include habitat mitigation costs for either BCV or GCW if there is a chance they may be incurred, understanding that LCRA TSC will not know whether it will incur any mitigation costs until the route is

[111] *Id.* at 45.

approved and the route is studied. There is no issue here, but it is another example where 1888 SBA has attempted to vitiate an element of the estimated costs of a segment because the costs were not estimated with the precision it demands – a precision that cannot occur until some point in the future.

j. Moderation of impact on the affected community and landowners.

So-Called "Unanswered Questions" about Land Use Proffered by 1888 SBA

After concluding its lengthy comparative analysis of the advantages of routes other than Route 17, 1888 SBA concludes by claiming that several "unanswered questions" exist about alleged routing constraints on certain of its members' property on Route 17, mainly in the nature of engineering constraints.[112] None of these present an engineering constraint so as to impair or disqualify Route 17 from consideration:

- Smiser's utilities – LCRA TSC has encountered underground utilities previously and designed and constructed around them.[113] This is a matter of detailed design and can be more than adequately considered at that time.[114]
- Dix driveway – LCRA TSC fully places structures in the detail design process to consider a multitude of factors.[115] Nothing has suggested LCRA TSC will ignore this land use and attempt to place a pole in Mr. Dix's driveway. LCRA TSC has made it abundantly clear that it can and will avoid pole placement in entrance gates and driveways.[116]
- Jackson's gate and "seasonal garage" – LCRA TSC follows PUC guidelines in its easement process that exclude *new* construction from easements;[117] existing structures are considered based upon individual right of way circumstances and detailed design. Again, nothing in the way of facts has demonstrated why or how the transmission line will necessarily interfere with these existing features at this location or vice versa.

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[112] 1888 SBA Brief (July 1, 2015) at 60-64.
[113] LCRA TSC Ex. 11, Melendez Rebuttal Test. at 18.
[114] Tr. 831-832.
[115] *See, for example,* LCRA TSC Ex. 11, Melendez Rebuttal Test. at 12-13 and 18.
[116] *See id.* at 34 (addressing Wehmeyer gate and driveway).
[117] *See* PUC Subst. R. § 25.101(d)(2).

- Heard's barn – LCRA TSC has clearly stated that the transmission line can be designed so that Mr. Heard's barn will not need to be removed or relocated.[118] LCRA TSC's engineering witness explained that *if* such a design were possible, it would not need to remove the structure.[119]
- Ryan's pasture – Mrs. Ryan now claims that occupation of some portion of an area containing 9.4 acres of pasture[120] by LCRA TSC's Tap Site 3 is a land use issue, because now she would have two fewer acres in a brood mare pasture. Ryan did not explain in her testimony any linkage between the amount of decrease in acreage of that pasture and its unusability as a brood mare pasture. As a result, LCRA TSC requested that any potential effects to the presence of electrical facilities be considered by Dr. Mercer from both the standpoint of EMF and any potential audible noise, and he could determine none.[121] Since Ryan has failed to explain on any factual basis what alleged impacts to the pasture are and how LCRA TSC's "land use" causes the alleged impacts, no issue was presented. Of course, if Tap Point 3 is utilized, LCRA TSC would also seek to site the tap point optimally at this location to reconcile, to the extent reasonable, electrical system investments paid for by ratepayers as a whole with the landowners' existing land uses.

k. Utilizing existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines.

l. Paralleling existing compatible rights-of-way.

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[118] LCRA TSC Ex. 11, Melendez Rebuttal Test. at 35.
[119] Tr. 828.
[120] An examination of the topographic map and aerial photography supplied as Figures 4-8 and 5-1, page 2 of 2, to LCRA TSC's Exhibit 1, Application Ex. 1 (Environmental Assessment) depicts a relatively flat area (based on topographic relief) containing two fenced pastures of approximately 5.4 and 4 acres in proximity to proposed Tap Point 3. This area size may be further confirmed by reference to aerial photography supplied as LCRA TSC Ex. 1, Application Attachment 7, Map 10 of 12 (depicting location of directly affected landowners). Utilizing the scale of those maps/photographs and multiplying the width and length of the relatively flat area near FM 1888 provides this acreage.
[121] LCRA TSC Ex. 16, Mercer Rebuttal Test. at 12, 13.

m. Paralleling property lines or other natural or cultural features.

Measurement of "paralleling property lines" – the use of apparent property lines

As LCRA TSC has explained since the beginning of the CCN process, LCRA TSC obtains and uses property line information through the property parcel taxation tract data supplied through the county appraisal districts in which potential line segments are located.[122] For comparative route assessment purposes, LCRA TSC and its consultant POWER Engineers have considered parcel lines an appropriate measurement for purposes of tabulating lengths parallel with property lines under PUC Subst. § 25.101(b)(3)(B)(iii). These parcels represent distinct properties for taxation purposes 1) that can be bought and sold separately, 2) can be treated by some individuals as "family ranches" but differently by other families, 3) can be taxed at different values (for example, dependent on the presence or absence of homestead or agricultural exemptions, and 4) frequently have fences associated with their boundaries (cultural features).[123] These differences have led POWER Engineers witness Reid to consider this an appropriate and consistent way of examining these measurements and tabulations over time.[124] Intervenor parties differ in whether they accept or reject LCRA TSC's method of tabulating lengths parallel with apparent property lines,[125] likely due to whether it enhances this criterion for their argument for or against a particular route.

LCRA TSC welcomes the parties' comparisons of percentages of parcel/property boundaries for purposes of comparing routes. However, LCRA TSC believes it inappropriate that Friends/Luckenbach Alliance in its Brief[126] and throughout the evidentiary record accuses LCRA TSC and POWER Engineers of modifying its criterion during the case. In its initial filing, as it has consistently in recent PUC CCN filings,[127] LCRA TSC has utilized apparent property lines as expressed through appraisal district parcel lines for purposes of comparing lengths parallel with property lines. LCRA TSC subsequently

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[122] *See* LCRA TSC Ex. 1, Application Attachment 1 (EA) at p. 5-23.
[123] LCRS TSC Ex. 13, Reid Rebuttal Test. at 30; Tr. 158, 354-356. Particularly with respect to fences, we have even seen in this case where they may exist when they have not been thought to. *See* Headwaters Ranch Post-Hearing Errata to Direct Testimony of Jody Turner (June 1, 2015) (Interchange Item #500).
[124] *Id.* at 355.
[125] *Compare* JLPA Brief at 24-25 (supports) *with* Friends/Luckenbach Alliance Brief at 26 (opposes).
[126] Friends/Luckenbach Alliance Brief at 26.
[127] PUC Dkt. Nos. 37448, 37778, 38354, 39479 and 40684.

discovered that of the total 69 segments, 9 of the 33 segments tabulated as paralleling apparent property lines did not contain proper measurements and tabulation of paralleling apparent property lines while the 24 remaining segments where this criterion was relevant did.[128] After LCRA TSC corrected its segment data where the full amount of paralleling of apparent property lines/parcel lines had not been measured and added correctly, the lengths of paralleling increased,[129] Friends/Luckenbach objected through its expert witness that LCRA TSC was now not correctly measuring lengths parallel with property boundaries.[130] What really happened was that Route 11, disfavored by Friends/Luckenbach Alliance, suddenly looked better for proponents of Route 11 on this criterion as a result of the correction of the measurement and tabulation error in depicting parcel boundaries on 9 segments. When the measurement and tabulation correction was applied to make all routes consistent, Route 11 suddenly leapt from 2.5 to 4.3 miles of paralleling apparent property lines, exceeding the 3.5 miles for that criterion on Route 17.[131] Thus, Route 11 looked more attractive when that (corrected) criterion was considered. Friends/Luckenbach Alliances strategy is understandable but inappropriate; however, the routes should all be compared in the same way for the same criteria.

n. Conformance with the policy of prudent avoidance.

2. <u>Are there alternative routes or configurations that would have a less negative impact on landowners? What would be the incremental costs of those alternatives? (Order of Referral Issue No. 5)</u>

3. <u>If alternative routes or facility configurations are considered due to individual landowner preference? (Order of Referral Issue No. 6)</u>

a. Have the affected landowners made adequate contributions to offset any additional costs associated with those configurations?

b. Have the accommodations to landowners diminished the electrical efficiency or reliability of the line?

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[128] In remaining routing segments, apparent property lines were adjacent to features that caused those apparent property lines to be clearly identifiable as breaks in property ownership. Specifically, where an apparent property boundary paralleled a highway, the highway right of way (owned by TxDOT) created a definitive break in ownership.

[129] *See* LCRA TSC Errata No. 2 to the Application (March 26, 2015), LCRA TSC Ex. 1A.

[130] *See* Friends Ex. 16, Direct Testimony of Mark Turnbough at 18-21.

[131] LCRA TSC Ex. 13, Reid Rebuttal Test. at Ex. RRR-4R.

4. **Texas Parks & Wildlife Department. (Preliminary Order Issue No. 7) Addressing recommendations or informational comments made pursuant to Texas Parks and Wildlife Code §12.0011(b)**

   a. **Modifications (if any) to the proposed project as a result of recommendations/comments.**

   b. **Conditions or limitations (if any) to include in final order as a result of recommendations/comments.**

   c. **Other disposition (if any) of recommendations/comments.**

   d. **Explanation of why any recommendation or comment should not be incorporated, acted upon, or is otherwise inappropriate or incorrect because of specific facts and circumstances of case or law applicable to contested case.**

VI. Conclusion

All 20 routes proposed by LCRA TSC in its Application and all variations of those routes proposed by various intervenor groups using existing routing segments are viable and available for selection in this proceeding. As illustrated by the extensive discussion of certain limited issues above, none of LCRA TSC's routes suffer from any special detriment or disadvantage that would remove them from an objective comparison under accepted routing factors. While the routes that formed much of the basis for comparison at the hearing (Route 17/17 Modified, Route 16/16 Modified, and Route 11/11 Modified) may each perform better on some metrics, LCRA TSC continues to believe that Route 17 best complies with the Commission's statutory and regulatory routing criteria.

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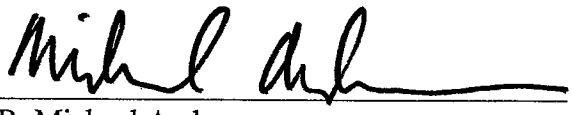
Email: rmanderson@bickerstaff.com

By: 
R. Michael Anderson

ATTORNEYS FOR LCRA TRANSMISSION SERVICES CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on this the 20th day of July, 2015, by email, facsimile, First-class U.S. Mail, or by hand delivery.

R. Michael Anderson

RECEIVED

JUN 19 2014
6-2014-57
GENERAL MANAGER

Hill Country Land Trust

ACCREDITED LAND TRUST ACCREDITATION COMMISSION

June 18, 2014

Phil Wilson, General Manager
Lower Colorado River Authority
P.O. Box 220
Austin, TX 78767

Dear Mr. Wilson:

In 2012 the Hill Country Land Trust welcomed the news that the Lower Colorado River Authority (LCRA) was forming a land trust (Colorado River Land Trust) to help protect land in the Colorado River basin for future generations of Texans. Becky Motal, general manager at the time, was quoted as saying, "A big part of our mission is land conversation and stewardship of the lower Colorado River."

Since 1999 our land trust has conserved over 5,700 acres through 19 conservation easements in the Hill Country, part of which includes the LCRA service area. One of our most significant donated conservation easements is the 1,561 acre Hershey Ranch located in Southeastern Gillespie County. We were recently dismayed to learn that several proposed routes of the Blumenthal Substation and 138-kV Transmission Line Project pass across the Hershey Ranch.

HCLT is now faced with the challenge to defend the conservation values outlined in this easement, just as the Colorado River Land Trust would be required to do. We are dismayed because money and effort spent on this defense would be better served in acquiring additional conservation easements to protect more of our Hill Country landscape. HCLT struggles to understand how LCRA can solicit conservation easements which require protection and defense in perpetuity while proposing transmission lines over land held by other land trusts.

We request that LCRA, in this case and in future cases, weigh conservation easements as a factor in routing transmission lines. We also ask that LCRA reconsider the routes for this proposed transmission lines and avoid ALL conservation easements.

We look forward to working with the Colorado River Land Trust, especially where our missions overlap and we welcome the opportunity to discuss this issue with any of your representatives.

Sincerely,

Katherine J. Peake

Katherine Peake
President

Cc: Lance Wenmohs, LCRA; LCRA Board of Directors; Colorado River Land Trust Board of Directors; and Judy Boyce, Hershey Ranch