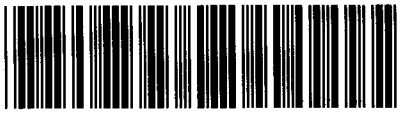

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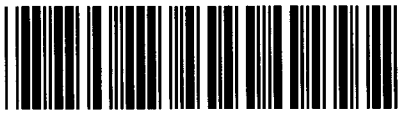

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APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED BLUMENTHAL SUBSTATION AND 138-KV TRANSMISSION LINE PROJECT IN BLANCO, GILLESPIE, AND KENDALL COUNTIES	§	**BEFORE THE STATE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

JENSCHKE LANE PRESERVATION ALLIANCE'S REPLY TO OTHER PARTIES' EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION AND SUMMARY

When the overall cost and footprint of a project is relatively small, as in this case, the public interest is not served by rote selection of the "shortest and cheapest" option. Selecting the shortest of several short routes, or the cheapest of several cheap routes, is not sufficient to satisfy the requirements of PURA and Commission rules. Instead, the Commission must give due weight to other important factors like maximizing paralleling, limiting land fragmentation, minimizing habitable structure impacts/prudent avoidance, and avoiding unique or disproportionate impacts to affected homeowners and the local community.

Several parties excepted to the Proposal for Decision's (PFD's) recommendation of Route 16M, and suggested that the Commission should select Route 17 or Route 17Y instead. These parties' exceptions give undue weight to what the PFD accurately characterizes as inconsequential cost and length differences between Route 11 and Routes 17 or 17Y, while ignoring material drawbacks of Routes 17 and 17Y that could be avoided by selecting Route 11. The PFD correctly noted that "the primary evidence in support of Routes 17 and 17Y was the estimated lower cost and the shorter length of the route in comparison to Routes 11, 11M, 16, and 16M."[1] But the differences in cost and length between Routes 17/17Y and Route 11 are inconsequential, and cannot reasonably overcome the advantages of Route 11. Route 17Y, the shortest option considered, is only ***eight hundredths of a mile*** shorter than Route 11.[2] Route 17,

[1] PFD at 51.

[2] Tr. (Melendez) at 350:17-18 (Route 17Y is 10.317 miles long).

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the next shortest option, is only ***four hundredths of a mile*** shorter than Route 11.[3] That is only 422 and 211 feet, respectively, which would add ***less than one additional span*** to the proposed line.[4] And that additional span may not even be necessary—LCRA witness Ms. Melendez testified that such minor differences in line distance can disappear altogether once construction begins and slight modifications are made to accommodate engineering challenges.[5] These trivial length discrepancies are not a valid reason to select one route over another.

The estimated cost differences among Routes 17, 17Y and 11 are equally insignificant. The PFD was correct to find that the $3.5 million difference in cost between the least and most expensive of the Focus Routes[6] is not an important factor in this case—especially given the uncertainty inherent in LCRA's cost estimates.[7] As the PFD explained, it is imprudent to place great weight on LCRA's cost estimates, especially when the spread is so minor, because "[c]osts such as habitat mitigation and ROW acquisition are merely estimates that are subject to change once LCRA TSC has access to the property to do on-site evaluations."[8] Given this uncertainty, the small, relatively speculative cost difference between Routes 17 or 17Y versus Route 11–a difference of $2.7 or $2.85 million, respectively[9]–should not be a deciding factor in this case.

While Routes 17 and 17Y share most of the same links, they each have unique drawbacks that make Route 11 a better option than either. Specifically, Route 17 bisects a conservation easement located on link X,[10] which should be avoided to preserve environmental integrity and limit unnecessary land fragmentation. Both Commission Staff and the Texas Parks and Wildlife

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[3] *See* Direct Testimony of John Joseph Kuhl, JLPA Ex. 1 at 9:11-17 (Table 1: Estimated Route Cost Analysis) (Route 17 is 10.36 miles long and Route 11 is 10.4 miles long).

[4] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 1–8 (spans for this line are expected to be 600-1000 feet long).

[5] Tr. (Melendez) at 229:22-25.

[6] The "Focus Routes" are the six routes that the PFD analyzed in depth: Routes 11, 11M, 16, 16M, 17, and 17Y.

[7] PFD at 49.

[8] PFD at 50.

[9] *Cf.* LCRA TSC Ex. 1, Application Attachment 3 (Route 11 cost estimate) *with* FM 1888 Ex. 23 (Route 17Y cost estimate).

[10] Direct Testimony of Chris Hale, FM 1888 Ex. 2 at 8:20-9:9.

Department (TPWD) have recommended avoiding this conservation easement.[11] Route 17Y avoids the conservation easement by substituting link Y for link X, but this substitution adds ***three additional habitable structures*** that are all located on Link Y, for a total of 10 habitable structures.[12] By itself, link Y has six habitable structures, which is the greatest number of habitable structures of any link in this case and more than many of the end-to-end routes LCRA proposed.[13] Route 11 is a better alternative than either Route 17 or Route 17Y because it avoids the conservation easement on link X (part of Route 17), impacts only eight habitable structures compared to the ten on Route 17Y, and still maintains an exceptionally low cost and length.

Route 17 and 17Y also share many of the same drawbacks as Route 16M due to their close proximity to the Stonewall VORTAC—but to an even greater degree because Routes 17 and 17Y include all three of links S, T, and V, which are the links where LCRA will be forced to impose H-frame structures and restrictive siting requirements on local residents to limit interference with VORTAC navigation signals. As discussed in the Jenschke Lane Preservation Alliance's (JLPA's) Exceptions to the PFD, and in further detail below, building the line so close to the VORTAC will require aesthetically distasteful H-frame towers—which were overwhelmingly disfavored by the local community[14]—to be placed literally in the backyards of residents along Jenschke Lane. Many of these residents will have their properties bisected by the proposed line at odd angles, as LCRA engineers attempt to "thread the needle" and avoid elevation rises that would cause even the shorter H-frame towers to exceed the height limitations in the FAA's VORTAC siting criteria. [15] Once again, these unique harms to a select group of local residents are both undisputed and ***completely avoidable***. No party has demonstrated that benefits to building a line along Jenschke Lane that are significant enough to outweigh the serious impacts it would have on local landowners. And this is without considering LCRA's

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[11] *See* Texas Parks and Wildlife's Initial Brief at 3 (June 30, 2015); Commission Staff's Post-Hearing Brief at 12 (July 1, 2015).

[12] *See* Rebuttal Testimony of Rob Reid, LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1) (route data).

[13] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1) (route data).

[14] JLPA Ex. 12 (LCRA Response to JLPA 1-8); Tr. (Melendez) at 232:10-14; LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 4–5.

[15] *See* Jenschke Lane Preservation Alliance's Exceptions to the Proposal for Decision (JLPA's Exceptions) at 21-25 (Section III.B.6.a – "Engineering Constraints"); Tr. (Melendez) at 230:17-231:15, 241:23-242:15, 789:2-21; Direct Testimony of Stephen Jenschke, JLPA Ex. 7 at 8:6-11.

exposure to costly future litigation[16] and mitigation requirements[17] from the Federal Aviation Administration (FAA) if the line actually interferes with the VORTAC signals—a very real risk given that the proposed conductor heights will exceed the allowances in the FAA's VORTAC siting order.[18]

Route 11 avoids these issues altogether. In addition to these benefits, and as discussed in JLPA's Exceptions to the PFD, Route 11 also avoids the conservation easement on the Hershey Ranch,[19] parallels existing compatible corridors to a greater extent than of any of the other Focus Routes,[20] and still maintains a low overall cost, length, and habitable structure count.[21] On balance, Route 11 performs the best of the various "Focus Routes" and should be selected.

II. NEED

Not further briefed.

III. ROUTES

A. Background

Not further briefed.

B. Which proposed transmission line route is the best alternative, weighing the factors in PURA § 37.056(c) and 16 TAC § 25.101 (b)(3)(B)?

1. Community Values

a) Public Meeting/Open House Feedback

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[16] JLPA Ex. 11 (Jan 16, 2014 FA&A Memo) at 1 ("if a structure(s) blocks a light or signal then the FAA Act of 1958 would apply. This would expose LCRA to litigation with the FAA and subject [LCRA] to a fine of $500/day until the matter is resolved.").

[17] JLPA Ex. 11 (Jan. 16, 2014 FA&A Memo) at 1–2 (Providing several options to mitigate the impact to the VORTAC navigational facility, including burying the conductor and transmission lines underground, decommissioning the VORTAC facility, dopplerizing the facility, or using wave–cancellation techniques). A number of these remedies would be subject to FAA agreement.

[18] *See* JLPA's Exceptions at 25-30 (Section III.B.6.b – "Engineering Constraints"); JLPA Ex. 15 (FAA Order No. 6820.10) at 4; Errata to the Direct Testimony of Raymond Syms, JLPA Ex. 2A at 1-2.

[19] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1).

[20] *See* JLPA's Exceptions at 30-33 (Section III.B.7 – "Routing Along Existing Corridors"); LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (route data); FM 1888 Ex. 23 (Route 16M data).

[21] *See infra* Section III.B.1.b ("Habitable Structures and Prudent Avoidance"); LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Tables 5-1) (route data).

Route 11 better aligns with the community's stated values than any of the other Focus Routes. As discussed in JLPA's Exceptions, Route 11: (1) can be constructed entirely using monopole towers, which the community overwhelmingly prefers to H-frames,[22] and which ***cannot*** be used on certain portions of Routes 17 or 17Y near the Stonewall VORTAC;[23] (2) observes the half-mile setback from Highway 290 requested by local wineries and other businesses,[24] which ***none*** of the substation locations on Jenschke Lane satisfy;[25] and (3) otherwise limits adverse impacts to the local wine tourism industry, which would be harmed by placing a line along Jenschke Lane.[26]

b) Habitable Structures and Prudent Avoidance

Route 11 performs ***better*** than Route 17Y in terms of habitable structure impacts and prudent avoidance. Route 17Y has a total of 10 habitable structures—two more than Route 11.[27] ***Six*** of these structures are located on link Y, which is more than many of the end-to-end routes LCRA proposed.[28] Reducing the habitable structure counts by using link X instead of link Y, as Route 17 does, requires crossing the conservation easement on Chris Hale's property.[29] Route 11 avoids the conservation easement on link X, and still maintains a lower habitable structure count with only eight total structures.[30]

Route 17 has one fewer habitable structure than Route 11 (and three fewer than Route 17Y),[31] but the homes impacted by Route 17 are generally much ***closer*** to the proposed line than

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[22] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 4–5 (89% of people ranked single poles as their "most preferred structure type" compared to only 3% for H-frames).

[23] JLPA Ex. 12 (LCRA Response to JLPA 1-8); Tr. (Melendez) at 232:10-14.

[24] *See* LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. B at Bates 269–70, 271, and 272 (Resolutions from Fredericksburg Convention and Visitor Bureau; Gillespie County Economic Development Commission, and the Texas Wine and Grape Growers Association Resolution); JLPA Ex. 1 (Kuhl Dir.) at 17:28-30, Ex. B (LCRA's Response to JLPA RFI 2-5) at 5.

[25] JLPA Ex. 1 (Kuhl Dir.) at 17:28-30, Ex. B (LCRA's Response to JLPA RFI 2-5) at 5.

[26] *See* JLPA's Exceptions at 10-12 (Section III.B.1.c.ii – "Vineyards, Community/Public Recreation, and Gathering Places").

[27] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1).

[28] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Tables 5-1 and 5-2).

[29] FM 1888 Ex. 2 (Hale Dir.) at 1:13-15.

[30] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1).

[31] *Id.*

those impacted by Route 11. The distance from the habitable structures on Route 11 to the centerline of the proposed right-of-way ranges from 110 to 274 feet,[32] with an average of 177 feet, while the distance of the homes on Route 17 to the transmission line ranges from just 56 to 194 feet, with an average of 127 feet.[33] Additionally, the two structures that are the very closest to the proposed line are impacted by both Route 17 and 17Y. On Link N, Routes 17 and 17Y pass within just ***56 feet*** of a single family residence.[34] On Link W, they pass within ***74 feet*** of another.[35] In contrast, the closest similar structure on Route 11 is 110 feet from the proposed centerline, or nearly twice the distance of the closest home on Routes 17 and 17Y.[36] As a result of this close proximity, Route 11 performs about equally with Route 17 in terms of habitable structure impacts and prudent avoidance despite having one additional habitable structure within 300 feet, and performs better than Route 17Y.

Between Routes 17 and 17Y, Route 17 reduces habitable structure counts by using link X instead of link Y, but Route 17 and link X will bisect the conservation easement on Chris Hale's property—a significant qualitative drawback from the perspective of environmental integrity and land fragmentation, and something that both Commission Staff and TPWD have recommended avoiding, as discussed below. Route 11 is a better option than either Route 17 or 17Y because it avoids the conservation easement on link X/Route 17, maintains a low habitable structure count with only eight total structures (compared to ten on Route 17Y), and better maximizes the distance to affected homes compared to Route 17, while maintaining a comparable cost and length.

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[32] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at C–11. Note that LCRA removed what was previously identified as habitable structure 17 because discovery revealed that it does not meet the criteria. LCRA Ex. 13 (Reid Reb.) at 32, Ex. RRR-5R (aerial photograph of structure).

[33] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at C–17. Note that LCRA removed what was previously identified as structure 31 because discovery revealed that it had been demolished. LCRA Ex. 13 (Reid Reb.) at 31, Ex. RRR-9R (Anne and Robert Tucker's Response to Patricia Ryan's First Request for Information).

[34] LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. C at Table 5-19.

[35] LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. C at Table 5-19. LCRA mistakenly labeled structure 30 as a hunting cabin, when it is actually a single family residence. Mr. Wenmohs made this correction on the record at the hearing on the merits. Tr. (Wenmohs) at 323:17-20 ("Actually, there's a mistake on the table. . . . [T]he Smiser property, structure 30, that's about 74 feet, would be their single-family residence.").

[36] LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. C at Table 5-13.

c) Description of Study Area/Land Use

i) Conservation Easements

In their exceptions to the PFD, Hershey Ranch and TPWD both argued that the Commission should place significant value on avoiding conservation easements. As noted above and in JLPA's Exceptions, Route 16M would bisect a conservation easement on the Hershey Ranch, while Route 17 would bisect a conservation easement on Chris Hale's property along Route X.[37] JLPA agrees that there are important benefits to avoiding conservation easements; however, Hershey Ranch and TPWD's exceptions are notably deficient because they fail to acknowledge that ***Route 11 also avoids both conservation easements in the study area***, and has other advantages that make it superior to Route 17Y. Namely, Route 11 has the most paralleling of any of the Focus Routes,[38] is among the very shortest routes,[39] completely avoids the VORTAC burdens and risks, better comports with community values,[40] and still has a relatively low cost.[41] When impacts to conservation easements are considered in conjunction with the other routing criteria, Route 11 is the best option.

ii) Vineyards, Community/Public Recreation, and Gathering Places

The parties recommending Routes 17 or 17Y in their exceptions fail to address or even acknowledge the impact that these routes would have on the local wine and tourism industries, which were identified as important community values for the Blumenthal area. As discussed in detail in JLPA's Exceptions, all of the lines that run along Jenschke Lane (including Route 17, 17Y, and 16M) would require a new substation within half a mile of Highway 290,[42] contrary to the expressed desires of the community,[43] and would impact a popular tourism corridor for the local wine industry. The entrance to Becker Vineyards, one of the area's most recognizable

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[37] FM 1888 Ex. 2 (Hale Dir.) at 8:20-9:9.

[38] *See* JLPA's Exceptions at 30-33 (Section III.B.7 – "Routing Along Existing Corridors").

[39] Approximately four to eight ***hundredths*** of a mile, or 211-422 feet, as discussed above.

[40] *See* JLPA's Exceptions at 4-13 (Section III.a – "Community Values").

[41] *See infra* Section III.B.8 ("Costs").

[42] JLPA Ex. 1 (Kuhl Dir.) at 17:28-30, Ex. B (LCRA's Response to JLPA RFI 2-5) at 5.

[43] *See* LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. B at Bates 269–70, 271, and 272 (Resolutions from Fredericksburg Convention and Visitor Bureau; Gillespie County Economic Development Commission, and the Texas Wine and Grape Growers Association Resolution).

wineries, is located on Jenschke Lane.[44] All visitors to this popular destination would have to travel past the substation and view the line as they enter and exit the vineyard.[45] A traffic count revealed that a significantly greater number of tourists use Jenschke Lane than Luckenbach Road (where Route 11 would be located). Saturday traffic along Jenschke Lane is ***over 50% greater*** than traffic down Luckenbach Road.[46] Traffic along Jenschke Lane is also substantially higher on Saturday than it is on other days of the week, which indicates a significant amount of tourist traffic, while car counts on Luckenbach Road remain relatively constant between weekdays and weekends.[47] This demonstrates the value of Jenschke Lane to the local tourism and wine industries. In addition to affecting tourist traffic down Jenschke Lane, constructing the line on Route 17 or 17Y would also prevent development of one of the area's newest vineyards on Jay and Rose Fosbury's property.[48] There is significant evidence in the record demonstrating that the local wine and tourism industries would be harmed more by a line along Jenschke Lane, such as Route 17 or 17Y, than by Route 11.

d) FAA-Registered Airstrips, Private Airstrips, and Heliports

The only aviation-related engineering constraint is the Stonewall VORTAC, which is in close proximity to links S, T, and V (one or more of which are components of Routes 16, 16M, 17, and 17M). This issue is discussed below in Section III.B.6.

2. Recreational and Park Areas

There are no parks or recreational areas on any of the routes, so this issue is not a factor.

3. Historical and Aesthetic Values

a) Historical Values

The PFD was correct to find that Route 11 is superior to Routes 17 and 17Y with respect to its impact on historical sites.[49] Not only does a significantly higher percentage of Route 17 (85.6%) and Route 17Y (86.4%) run through areas with high archeological and historic site

[44] JLPA Ex. 1 (Kuhl Dir.) at 20:25-21:7; Tr. (Kuhl) at 678:16-20.

[45] *Id.*

[46] JLPA Ex. 1 (Kuhl Dir.) at 21 (Table 2).

[47] *Id.*

[48] Direct Testimony of Dr. W. Jay Fosbury, JLPA Ex. 5 at 8:15-19.

[49] *See* PFD at 30.

potential compared to Route 11 (79.8%), but among all 23 routes considered in this case, Route 11 is tied for the least amount of length (8.3 miles) through such areas.[50] Additionally, testimony at the hearing established the existence of at least two archeological sites on Chris Hale's property along Route 17, including a State of Texas recorded site that falls ***directly under the centerline of link X***.[51] There are also archeological sites along Route 17Y, including a historic sheep shearing station on Ms. Ryan's property that would fall ***within the proposed ROW of Link Y***.[52] These areas would have to be cleared and disrupted if either Route 17 or 17Y were selected. There is no evidence that any historical site along Route 11 would be so impacted. Mr. Hale, Ms. Ryan and other landowners have also found prehistoric tools and other artifacts throughout their properties, including along areas that would be affected by Routes 17 and 17Y.[53] Taken as a whole, there is significant evidence to demonstrate that Route 11 is a better choice with respect to impact on historical sites, as the PFD recognized.

b) Aesthetic Values

Route 11 performs much better than Route 17 or 17Y in terms of aesthetic values. Most importantly, Routes 17 and 17Y[54] will have disproportionately harmful aesthetic impacts for the landowners along Jenschke Lane because LCRA will be required to use aesthetically disfavored H-frame towers on their properties to avoid interfering with the VORTAC navigation signals.[55] The Blumenthal community stated an emphatic aesthetic preference for monopole towers compared to H-frames, with ***89%*** of respondents to LCRA's survey stating a preference for monopoles.[56] From an aesthetic standpoint, the Commission should not require certain

[50] LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1).

[51] FM 1888 Ex. 2 (Hale Dir.) at 4:21-5:4; PFD at 28 ("While LCRA TSC initially determined that Route 17 had none of these features, LCRA TSC conceded that the evidence at the hearing established that it in fact had two sites.").

[52] Direct Testimony of Patricia Ryan, FM 1888 Ex. 1 at 39, Ex. 14.

[53] Direct Testimony of Tommie Turner, FM 1888 Ex. 6 at 5:11-6:2 (noting that the line will pass through an area where he has found "countless Native American artifacts"); FM 1888 Ex. 2 (Hale Dir.) at 4:21-5:4 (noting the presence of "profuse amounts" of historic artifacts and "prehistoric campsites everywhere"); FM 1888 Ex. 1 (Ryan Dir.) at 39:10-40:3 (noting that she has found prehistoric artifacts throughout her pastures, including the area proposed for Tap Site 3).

[54] And Route 16M.

[55] JLPA Ex. 12 (LCRA Response to JLPA 1-8); Tr. (Melendez) at 232:10-14.

[56] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 4–5 (89% of people ranked single poles as their "most preferred structure type" compared to only 3% for H-frames).

landowners to be so burdened with these aesthetically offensive structures when Route 11 can be constructed using entirely with monopole towers while still performing well under all other routing criteria.

As noted above and in JLPA's Exceptions, the Commission should prioritize preserving unspoiled Texas countryside when evaluating the aesthetic impact of the proposed line.[57] This factor weighs heavily in favor of selecting Route 11 over Route 17 or 17Y. In addition to avoiding conservation easements, Route 11 generally avoids carving new scars across the Texas Hill Country by paralleling existing compatible corridors to a much greater extent than Route 17 or 17Y. Route 11 has only 1.8 miles of length that are *not* parallel to an existing compatible corridor, compared to 2.4 miles along Route 17 and 2 miles along Route 17Y.[58]

The Commission should also consider the aesthetic impact of the line on areas near roadways, and when doing so it should consider the number of people who actually travel along each of those roadways. Like Route 16M, Routes 17 and 17Y would significantly impact the aesthetic appeal of the countryside along Highway 290, which is the busiest roadway in the area and was singled out for protection during the community input process.[59] Not only would Routes 17 and 17Y require a new substation within half a mile of Highway 290 (substation 9), but the line itself would be visible to traffic for a distance of 0.4 miles.[60] In contrast, no part of Route 11 would be visible from Highway 290.[61] Additionally, while Route 11 would be visible from Luckenbach Road, there is significant evidence demonstrating that more traffic will be affected by a line along Jenschke Lane, where Routes 16, 16M, 17, and 17Y would begin.[62] Therefore, although Route 11 may affect more miles of roadway, it would affect substantially fewer people than a line along Routes 17 or 17Y.

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[57] *See* JLPA's Exceptions at Section III.B.3.b ("Aesthetic Values").

[58] LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1).

[59] *See e.g,* LCRA Ex. 1 (Application), Attach. 1 (Environmental Assessment), App. B at Bates 269–70, 271, and 272 (Resolutions from Fredericksburg Convention and Visitor Bureau; Gillespie County Economic Development Commission, and the Texas Wine and Grape Growers Association Resolution).

[60] LCRA TSC Ex. 1, EA at 5-27; LCRA TSC Ex. 13, Reid Rebuttal at Ex. RRR-4R.

[61] *Id.*

[62] *See* JLPA Ex. 1 (Kuhl Dir.) at 21 (Table 2).

On balance, Route 11 is a better option than Route 17 or 17Y in terms of aesthetic impacts.

4. Environmental Integrity

a) Impact on the Environment

As with other routing criteria, the parties filing exceptions to the PFD's recommendation of Route 16M unduly focused on Routes 17 and 17Y, and failed to address the environmental benefits of Route 11 compared to any of these options.

In previous Hill Country cases, the PUC has recognized that "[l]and fragmentation, and its consequence, is one of the greatest statewide challenges to wildlife management and conservation in Texas."[63] Limiting total length and maximizing the length that parallels existing compatible corridors will limit such fragmentation[64]—as will avoiding conservation easements that were established with that very goal in mind. Critically, in addition to being one of the very shortest routes, Route 11 prevents habitat fragmentation by paralleling existing compatible corridors for a greater percentage of its length[65] and a greater total distance[66] than Routes 17 and 17Y while minimizing the total distance along the line that is ***not*** parallel to an existing corridor.[67] Route 11 also avoids fragmenting either of the conservation easements involved in this case, which cannot be said of Routes 16M and 17.

Route 11 also has other environmental advantages compared to Route 17 or 17Y. LCRA's Environmental Assessment found that "[t]he most likely potential permanent impact to wildlife would result from the clearing of upland and bottomland (including wetlands) woodland

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[63] Docket No. 38354, Final Order at FOF 77.

[64] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 5-16 ("By utilizing existing ROWS and/or paralleling existing linear features to the greatest reasonable extent, the potential impact to wildlife and habitat fragmentation are minimized.").

[65] Route 11 parallels existing features for 83.65% of its length, compared to 76.92% for Route 17 and 80.58% for Route 17Y. *See* LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (route data).

[66] Route 11 parallels existing features for 8.7 miles, compared to 7.7 miles for Route 17 and 8.1 miles for Route 17Y. *See* LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (route data).

[67] Route 11 contains 1.8 miles of length that are not parallel to an existing compatible corridor, compared to 2.4 miles along Route 17 and 2 miles along Route 17Y. *See* LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (route data).

habitats."[68] Route 11 is superior in this respect because it crosses 0.7 fewer miles of habitat than Route 17Y, and 0.4 fewer miles than Route 17.[69]

Concerns about impacts to golden-cheeked warbler habitat are largely speculative and do not support selecting Route 17 or 17Y over Route 11. There is no known endangered species habitat along Route 11.[70] Route 11 would pass through areas of ***possible*** golden-cheeked warbler habitat,[71] but until LCRA has access to the private properties where the line would be located, there is no way to know for sure whether any such habitat will be actually be affected by Route 11.[72] Further, even if Route 11 ***temporarily*** disturbs golden-cheeked warblers during construction, LCRA does not anticipate that constructing the line will have any significant adverse impact on any endangered species.[73] Given the speculative nature of any impacts to golden-cheeked warbler habitat, the Commission should give greater weight to avoiding the known detrimental impacts of clearing and cutting new corridors through the Hill Country and fragmenting previously undisturbed properties.

Overall, by limiting length, maximizing paralleling, avoiding conservation easements, and limiting habitat clearing, Route 11 performs better than Route 17 or 17Y in terms of environmental integrity. When this factor is considered in conjunction with the other benefits of Route 11 and drawbacks of Routes 17 or 17Y, the record supports choosing Route 11.

b) TPWD Recommendations

TPWD is correct that Routes 16 and 16M have the most severe environmental impact of any of the Focus Routes and should not be selected. TPWD is also correct that the Commission should not count portions of the routes that parallel the abandoned pipeline ROW on Routes 16 and 16M as "existing compatible corridors." However, TPWD's exceptions myopically focus on

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[68] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 5-16.

[69] Route 17Y crosses a total of 8.9 miles of upland woodlands/brushlands, bottomland/riparian woodlands, and NWI mapped wetlands compared to 8.6 miles for Route 17 and only 8.2 for Route 11. *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1).

[70] *See* LCRA Ex. 13 (Reid Reb.) at Ex. RRR-4R (Revised Table 5-1).

[71] *Id.*

[72] Tr. (Melendez) at 243:9–244:12.

[73] LCRA Ex. 1, Attach. 1 (Environmental Assessment) at 5-17 ("If present, [endangered] species may be susceptible to ***minor temporary disturbance*** during construction efforts, but the proposed transmission line project is ***not anticipated to result in significant adverse impacts*** to these species.") (emphases added).

comparing Route 16M to Route 17Y, and fail to compare the environmental benefits of Route 11 to either option. As discussed in the prior section, Route 11 has significant environmental advantages because it avoids both conservation easements and maximizes paralleling while maintaining one of the shortest lengths of any of the proposed routes. Further, TPWD's recommendations are limited exclusively to environmental factors, which is just one of the many criteria the Commission is required to consider in routing cases. When TPWD's recommendations are considered along with the other routing criteria, Route 11 stands out as the best option.

5. Probable Improvement of Service/Lowering of Cost to Area Consumers

Not briefed.

6. Engineering Constraints

The parties recommending Routes 17 or 17Y also ignore the only major engineering constraint in the study area—the FAA VORTAC navigation facility. Attempting to construct the line in close proximity to the VORTAC will impose disproportionate burdens on nearby landowners along links S, T, and V, and could ultimately expose LCRA to costly litigation and remediation requirements if the line interferes with the VORTAC's signals. Route 11 completely avoids all of these problems and risks, while maintaining a short length, low cost, low habitable structure impact, high paralleling factors, and other qualitative benefits. With Route 11 as an option, there is no good reason to attempt to "thread the needle" in this fashion by building a line so close to the VORTAC.

No party has disputed the unique hardships that will be imposed on landowners along Jenschke Lane if LCRA attempts to build the line near the VORTAC. JLPA discussed this issue in its Exceptions to the PFD in relation to Route 16M, which includes links S, T, and A1. Routes 17 and 17Y include not only links S and T, which are components of Route 16M, but also link V, which is one of the links where complying with the VORTAC siting restrictions creates the greatest burdens on local residents due to increased land elevation. LCRA, Staff and other parties have recognized the importance of working with affected residents to minimize the

impact that a transmission line would have on their properties.[74] As Staff witness Mr. John Poole made clear, in making a routing decision, the Commission should consider whether certain routes impose more restrictive limitations on LCRA's ability to work with affected landowners.[75] Contrary to this important objective, Routes 17 and 17Y—as well as any route that includes Links S, T, or V—will unduly burden landowners by (a) preventing use of monopole towers and forcing landowners to have strongly disfavored H-frame towers in their backyards, and (b) limiting the landowners' ability to adjust the line location to mitigate land use and aesthetic impacts. In its exceptions, Staff dismissively asserts that "[a]ny impacts that Route 17-Modified will have on landowners . . . can be minimized by LCRA TSC's construction practices."[76] But this assertion ignores LCRA's admission that it will be extremely limited in its ability to make even minor routing adjustments to accommodate landowners along links S, T, or V, and that monopoles will not be an option due to the FAA's height restrictions.[77] Route 11 completely avoids these issues and limitations while also performing extremely well on other routing criteria, so there is no good reason to impose such gratuitous harms on the residents of Jenschke Lane.

In its Exceptions, JLPA discussed the burden that the FAA's VORTAC siting restrictions will have on Jay and Rose Fosbury, whose property is located on link S and is impacted by Routes 16M, 17, and 17Y (among others). In addition to links S and T, Routes 17 and 17Y also contain link V. Link V provides yet another example of the hardships that will be imposed on local landowners by attempting to build the line so close to the VORTAC. Due to elevation rises along the property boundary of Stephen and Shirley Jenschke, LCRA has no choice but to bisect their land at an intrusive angle that isolates the northeastern corner, and will make this portion of

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[74] Tr. (Reid) at 217: 14–17; Tr. (Wenmohs) at 352:3–14 (Q: Do Commission orders approving transmission lines contain standard language requiring the transmission line owner to work with affected landowners to minimize the impact that the transmission line would have on their land? A: All that I've ever worked on have contained that language. Q: And is this LCRA's practice to do so? A: It is.); Tr. (Poole) at 725:15–24.

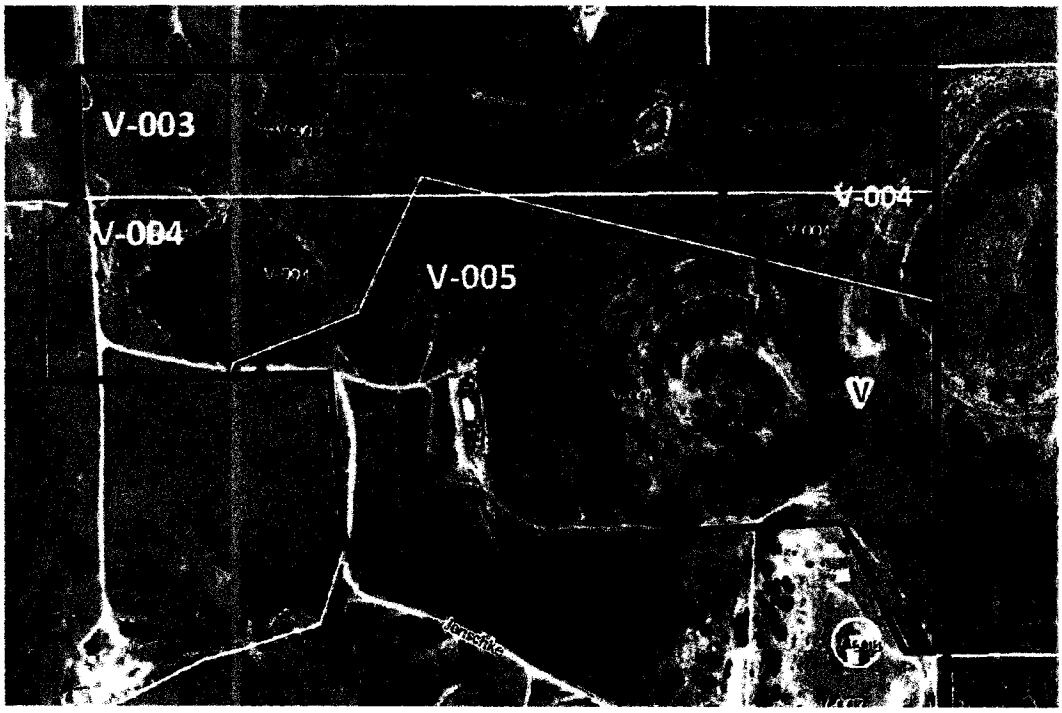
[75] Tr. (Poole) at 725:19–24 ("Q: And if LCRA's ability to work with landowners to minimize the impacts to their property were limited on certain routes, is that something you think the Commission should consider? A: Yes, I think that's something we should consider.").

[76] Commission Staff's Exceptions to the Proposal for Decision (Staff's Exceptions) at 3 (Oct. 7, 2015).

[77] JLPA Ex. 12 (LCRA Response to JLPA 1–8) ("LCRA TSC anticipates using H-frames . . . along all or portions of segments Q1, S, T, U, and V."); Tr. (Melendez) at 232:10-14 (H-frames will be required); Tr. (Melendez) at 241:23-242:15, 798:2-21 (tower placement will be constrained on links affected by the VORTAC because of a need to avoid elevation rises).

the property largely unusable. This is shown in the following map, with the black line showing the property boundary and the red line showing the proposed location of the transmission line:

Map of Segment V Crossing Stephen and Shirley Jenschke Property[78]



Mr. Jenschke has lived on this property for nearly his entire life, and his family has owned the property since before the Civil War. Because the elevation is higher along the perimeter of Mr. Jenschke's property, following his property boundaries would exceed the FAA's tower height limitations and is not an option, even with the lower H-frame structures.[79] As a result, there is virtually nothing LCRA can do to improve this situation for the Jenschkes. The Commission ***will not have the option*** to mitigate the impact to Stephen and Shirley Jenschke by following their property line on the east, as they requested,[80] or by giving them monopole towers. Landowners on the routes that are not in conflict with the VORTAC's navigation signals

[78] *Id.* at Ex. SJ–1.

[79] *See* JLPA Ex. 19 (Mar. 21, 2014 email among LCRA engineers) (discussing adjusting this angle to avoid exceeding VORTAC height limitations); Tr. (Melendez) at 789:13-19 (confirming that the email in JLPA Ex. 19 is referencing this location); Tr. (Melendez) at 242:6-15 ("Q: And so would you agree that there are likely to be issues if you attempted to move Link V to follow Mr. Jenschke's property line because that would then increase the elevation and potentially create height interferences with the VORTAC? A: If we attempted to parallel his eastern property boundary and the elevation increase is there, then we would need to – then that – that could be a problem with the VORTAC. We would need to evaluate that.").

[80] JLPA Ex. 7 (Jenschke Dir.) at 8.

will not have to endure this kind of burden. There is no reason to impose this type of unique harm on a select group of landowners when Route 11 can avoid those issues altogether while performing comparably to Routes 17 and 17Y under the applicable routing criteria.

In addition to these undisputed, unique harms to landowners on links S, T, or V, portions of Routes 17 and 17Y will also exceed conductor height limitations set forth in the FAA's VORTAC siting order.[81] This issue is discussed at length in JLPA's Exceptions in relation to links S, T, and A1, which are part of route 16M. Neither LCRA nor any other party has disputed that ***if*** the VORTAC siting order is enforced as it is written, then links S, T, V, and potentially others would violate the conductor height limitations. Instead, LCRA's witness, Mr. Pittman, contends that the FAA will not actually enforce this restriction beyond 1,200 feet. There is no support for this claim in the actual language of the FAA's order, and LCRA applied the ***tower*** height limitation from the very same paragraph as this conductor height limitation out to a distance of two and a half nautical miles.[82] If actual interference were to occur, Mr. Pittman as acknowledged that the FAA would have the right to impose fines and remediation measures. As Mr. Pitman himself has explained, "if a structure(s) blocks a light or signal then the FAA Act of 1958 would apply,"[83] which would expose "LCRA to litigation with the FAA and subject [it] to a fine of $500/day until the matter is resolved."[84]

The most important takeaway from this discussion is that any exposure to LCRA or disproportionate burden on specific landowners related to potential interference with the VORTAC is ***completely avoidable***. Neither LCRA, Mr. Pittman, JLPA, nor any of the other parties can predict with any certainty how the FAA will react to this particular set of circumstances, or how it will choose to enforce its legal rights under Order No. 6820.10. The bottom line is that there is no reason to risk the consequences of interfering with the VORTAC, or create exposure to future litigation, fines, and other remediation measures, when other routes avoid these issues altogether and still perform extremely well under the routing criteria. Route 11 completely eliminates any risks related to VORTAC interference or potential mitigation

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[81] Direct Testimony of Raymond Syms, JLPA Ex. 2 at 10–11; JLPA Ex. 15 (FAA Order) at 4.

[82] *See* Rebuttal Testimony of Clyde Pittman, LCRA Ex. 14 at 11 (analyzing the 1.5 degree height limitation out to 2.5 nautical miles).

[83] JLPA Ex. 11 (Jan. 16, 2014 FA&A Memo) at 1.

[84] *Id.*

measures while also avoiding the undue burdens on affected landowners that stem from attempting to meet the FAA's tower height limitations, which are not in dispute. Route 11 also better complies with the most important community values than Routes 17 and 17Y;[85] affects fewer habitable structures than Route 17Y and only one more than Route 17;[86] better observes the policy of prudent avoidance than Routes 17 and 17Y;[87] and has the best paralleling factors of any of the Focus Routes.[88] There is no reason to select Routes 17, 17Y, 16M, or any other routes that use links S, T, or V when Route 11 presents a better, safer choice.

7. Routing Along Existing Corridors

As previously noted, Route 11 performs the best of all the Focus Routes in terms of following existing compatible corridors. Route 11 parallels existing ROW and property lines for ***83.65% of its length*** (8.7 miles out of 10.4 total),[89] which is the most of any of the Focus Routes. Route 11 also only travels 1.7 miles without paralleling existing ROW and property lines, which is the least of any of the Focus Routes.[90] In its exceptions, Staff mistakenly asserts that Route 17Y parallels compatible ROW for a greater percentage of its length than the other Focus Routes.[91] ***This is not accurate.*** Staff's claim is based on the testimony of their witness, John Poole, who was testifying in his first routing case[92] and appears to have miscalculated the amount of paralleling on Route 11.[93] Since the Commission has placed great emphasis on paralleling property boundaries and existing compatible corridors in prior Hill Country

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[85] *See supra* Section III.B.1 ("Community Values").

[86] *See supra* Section III.B.1.b ("Habitable Structures and Prudent Avoidance").

[87] *Id.*

[88] *See infra* Section III.B.7 ("Routing Along Existing Corridors").

[89] *See* LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (route data).

[90] *Id.*

[91] Staff's Exceptions at 2.

[92] Tr. (Poole) at 722:25-723:1.

[93] *Cf.* LCRA Ex. 13 (Reid Reb.) at RRR-4R (Revised Table 5-1) (stating that Route 11 runs parallel to existing ROW for 4.4 miles and apparent property lines for 4.3 miles, for a total of 8.7 miles of paralleling) *with* Direct Testimony of John Poole, Staff Ex. 1 at 28 (stating that Route 11 has a 'Parallel Length' of only 7 miles).

transmission line cases,[94] it should weigh this factor heavily in favor of Route 11, which outperforms all other Focus Routes.

8. Costs

Parties supporting Route 17 or 17Y place undue emphasis on the cost differences among the Focus Routes. As noted previously, and as the PFD also concluded, the overall costs of the Focus Routes are not significantly different, and are subject to a great degree of uncertainty.[95] As a result, the Commission should not over-rely on cost estimates in selecting among the Focus Routes. Route 17Y is the lowest cost route, but it is merely ***the cheapest of a number of cheap alternatives***. Like many other factors in this case, the cost differentials represent a very tight data set—which is why the impacts to the affected landowners and the wishes of the community should be given more weight than LCRA's cost estimates, which range from $24.8 million (Route 17Y) to $40 million (Route 10)—a difference of just over $15 million.[96] It is not uncommon to have cost differentials of $50 million or more in larger transmission CCN cases. For example, in Docket No. 38354, a 345-kV LCRA project, the cost estimates ranged from $252 to $407 million—a $155 million difference.[97] While cost is certainly an important factor for the Commission to consider, it should be less of a driver in selecting a route when the overall project is relatively small and low cost in the first instance.

Based on LCRA's cost estimates, at $27,167,000,[98] Route 11 has the sixth lowest cost of the 23 total routes under consideration (the 20 options field by LCRA, Route 11M, Route 16M, and Route 17Y). This means both Route 11 ranks in the top third of all route options for lowest

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[94] *See* Direct Testimony of James Dauphinais, Luckenbach Alliance Ex. 2 at 7:1-6 ("in more recent transmission line routing proceedings (e.g., Docket Nos. 37464, 38230 and 38354), the Commission has not necessarily selected the route that has the least number of habitable structures impacted when another route had significantly better performance in regard to paralleling existing compatible Right-of-Ways (including apparent property boundaries).").

[95] PFD at 49-50.

[96] LCRA Ex. 1 (Application) at Attach. 3 (Cost Estimates); Rebuttal Testimony of Jessica Melendez, LCRA Ex. 11 at JRM-1R (providing cost for Route 11 Modified at $27,973,000 and for Route 17Y at $24,311,000).

[97] Docket No. 38354 Final Order at FOF 119.

[98] *See* LCRA Ex. 1 (Application) at Attach. 3 (Cost Estimates); JLPA Ex. 1 (Kuhl Dir.) at 6 (providing Route 11 Modified cost of $27,973,000). Mr. Kuhl notes that Route 11 Modified is the sixth lowest–cost because Route 17Y was not a part of LCRA's application. Including Route 17Y makes Route 11 modified the seventh lowest–cost.

cost. Route 11 costs only $2.86 million more than Route 17Y and $2.7 million more than Route 17.[99]

This small cost difference between Route 11 and Routes 17/17Y is (1) uncertain, and (2) justified by the other benefits of Route 11, especially in light of the PFD's finding that the $3.5 million difference in cost between the most and least expensive Focus Routes should not be a significant factor in this case.[100] First, more than $2.3 million of the cost difference between Route 11 and Routes 17/17Y (or 85%) is estimated mitigation costs associated with clearing endangered species habitat.[101] As noted in the PFD, habitat mitigation cost estimates are uncertain and subject to change.[102] As Ms. Melendez acknowledged at the hearing, there is no way to know whether habitat will actually need to be cleared, and what the associated mitigation costs will be, until LCRA actually starts the construction process.[103] Further, LCRA assumed that habitat would exist, and would need to be cleared, if ***any one*** of three habitat prediction models indicated that this is a possibility.[104] Additionally, if any of the models suggested the presence of habitat, both "direct" and "indirect" mitigation costs were assumed in the estimates, which multiplies the impact of the habitat assumptions.[105] As a result, the habitat mitigation costs are likely to be significantly overstated. Since these costs represent the majority of the difference between Routes 17/17Y and Route 11, cost should be given little weight in the Commission's decision.

The PFD also rightly notes that the true cost of each route will diverge substantially from LCRA's estimate due to the methodology used to estimate ROW acquisition cost.[106] To come up with its ROW acquisition cost estimates, LCRA used tax appraisal data from the three counties that make up the study area rather than commissioning appraisals of each affected property.[107]

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[99] LCRA Ex. 1 (Application) at Attach. 3 (Cost Estimates).

[100] PFD at 49.

[101] Tr. (Melendez) at 243:10–244:12; LCRA Ex. 1 (Application), Attach. 3 (Cost Estimates) at 3 (providing environmental species mitigation cost estimates by route).

[102] PFD at 50.

[103] Tr. (Melendez) at 243:10–244:12.

[104] FM 1888 Ex. 2 (Hale Dir.) at 29.

[105] *Id.*

[106] PFD at 50.

[107] LCRA Ex. 11 (Melendez Reb.) at 22-24.

While this shortcut approach makes sense during a preliminary evaluation, it injects uncertainty into the final cost estimates because "tax appraisal methods can vary significantly from county to county even though the study area represents a relatively small area."[108]

Further narrowing the minor cost differences is the fact that Routes 17 and 17Y have the potential to cause costly interfere with the VORTAC. LCRA witness Mr. Pittman has represented that if the transmission line were to interfere with the communication signals from the VORTAC, the FAA could impose costly remediation measures like dopplerizing the VORTAC, requiring the line to be moved or buried, or decommissioning the facility.[109] None of these costs—which could be several million dollars[110]—were considered in LCRA's cost estimates.

In sum, the PFD was correct to place little weight on the projected cost difference between the Focus Routes. While Routes 17 and 17Y have a slightly lower cost estimate than Route 11, these differences are small, uncertain, and likely overstated. The Commission should give much greater weight to factors like the impact the route will have on impacts residents and the local community. As discussed above, these benefits outweigh the slightly higher estimated cost of Route 11.

IV. CONCLUSION

Relying on the shortcut of selecting the "shortest and cheapest" option, as some parties have proposed, is not appropriate in a case where the overall footprint of the line is relatively small, and numerous options are relatively short and relatively cheap. The Commission must weigh minor differences in cost and length against more significant qualitative differences and impacts on local residents and the community. When all of these factors are duly considered, Route 11 is the best option. Route 11 is short, low-cost, and provides other qualitative benefits and advantages that more than outweigh any minor cost or length savings that Routes 17 or 17Y would provide. Of the Focus Routes, Route 11 performs best in terms of paralleling property lines and existing compatible corridors, while maintaining a short overall length. Route 11

[108] PFD at 50.

[109] JLPA Ex. 11 (Jan. 16, 2014 FA&A Memo) at 1-2.

[110] *Id.* at 2 (explaining that converting the VORTAC to a Doppler VORTAC would cost between $1.3 and $3M).

avoids both of the conservation easements in the area, and limits unnecessary land fragmentation. Route 11 also avoids all of the complications, risks, and unique burdens on local residents that are caused by trying to build a line too close to the FAA's VORTAC facility. Route 11 also better comports with community values by allowing the entire line to be constructed using monopole towers, minimizing visibility from Highway 290, and limiting impacts to the local wine and tourism industries. When taken as a whole, these factors demonstrate that Route 11 is the best choice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Katherine L. Coleman, Attorney for the Jenschke Lane Preservation Alliance hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 21st day of October, 2015 by facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

Katie Coleman