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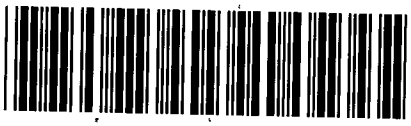

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APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE ROUND ROCK – LEANDER 138-KV TRANSMISSION LINE IN WILLIAMSON COUNTY	§ § § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

STEWART CROSSING HOMEOWNER ASSOCIATION, TRAILS OF SHADY OAK RESIDENTIAL COMMUNITY, INC., AND MERITAGE HOMES OF TEXAS, LLC'S REPLY TO MOTIONS FOR REHEARING

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I. INTRODUCTION

Leander, Cedar Park, and the Burleson Ranch have taken the approach of "throwing spaghetti at the wall" in their motions for rehearing, but none of their arguments stick. The Commission's Order is well-reasoned and well-supported, and there is no justification for modifying it on rehearing. The record provides ample justification for the Commission's decision to select Route LHO-1, which travels down a more qualitatively compatible corridor for infrastructure development and maximizes the distance of the line from residences and parklands—exactly as the local community requested during LCRA TSC's open house process.

In the face of the solid facts and reasoning underlying the Commission's decision, the parties filing motions for rehearing have resorted to attacking the Commissioners' soundness of mind and fabricating supposed flaws in the Order. But contrary to their claims, the Commission's decision not to follow the PFD in giving "great weight" to the agreement between the cities of Leander, Cedar Park, and Round Rock (the "Cities") when conducting its community values analysis was not error. Nor is there any legal basis for those parties' complaints that the Commission took improper public comment or failed to make its decision in public as required by the Texas Open Meetings Act. It is emblematic of the quality of the Commission's Order that Cedar Park and the Burleson Ranch have resorted to impugning the Commissioners' ability to make rational decisions in the face of public comment rather than

identifying any true substantive or procedural flaws.[1] Simply put, the Commission used proper procedure and solid reasoning to come to the correct decision, and the Order explains and memorializes that decision. Accordingly, there is no reason to grant rehearing.

II. ARGUMENT AND AUTHORITIES

A. The Commission's Order is well-supported by the record.

The vast majority of the points made in Cedar Park, Leander, and the Burleson Ranch's motions for rehearing are merely second-guessing how the Commission decided to weigh the evidence. However, the record provides ample support for the Commission's decision, and the motions for rehearing present no reason for the Commission to reverse course.

1) *Route LHO-1 follows a more compatible corridor for transmission line development than Route CoL-1.*

The Commission was correct to determine that a rapidly developing commercial district along a major highway provides a more qualitatively "compatible corridor" for a new transmission line than a rural, primarily residential county road.[2] The essential difference between the two routes that were in contention is that Route LHO-1 follows Ronald Reagan Boulevard, a 65 MPH,[3] 200 to 480 foot wide[4] highway lined with substantial existing and planned commercial development,[5] while Route CoL-1 follows County Road 175, a 65 to 130 foot wide,[6] 45 MPH roadway that is generally lined with single-family homes and residential

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[1] *See* Cedar Park Motion for Rehearing at 14-15 (characterizing public comment as "testimony that was . . . often emotional due to family travails unrelated to any transmission routing issue that brought tears to the eyes of the Commissioners and turned the tone of the entire case and proceeding."); Burleson Ranch Motion for Rehearing at 17-18 ("One of the Commissioners became so emotionally overwhelmed in response to the theatrics of the public commenters that it caused her to tear up on several occasions.").

[2] *See* P.U.C. Subst. R. 25.101(b)(3)(B)(i) and (ii) (requiring consideration of whether routes parallel or utilize "compatible" corridors).

[3] Tr. (Butler Cr.) at 874:14-23 (Nov. 16, 2016).

[4] *See* Meritage Homes Ex. 6 (Leander Response to MH 1-7) (Ronald Reagan's right-of-way varies between 200 and 480 feet wide).

[5] Leander Ex. 1 (Yantis Dir.) at 11:8-10, 12:3-6, 12:12-19; Tr. (Yantis Cr.) at 1053:3-1054:10, 1061:22-1062:10 (Nov. 17, 2016).

[6] *See* Meritage Homes Ex. 6 (Leander Response to MH 1-7) (CR 175's right-of-way varies between 65 and 130 feet wide).

development.[7] These facts support the conclusion that building the line along Ronald Reagan Boulevard, which is a substantially better location for infrastructure development, will be less impactful and disruptive to land use and enjoyment.

In an attempt to work around the Commission's well-reasoned decision, the parties filing motions for rehearing have adopted an overly simplistic interpretation of the acceptable scope of the Commission's routing analysis and have deemed many of the distinguishing factors between Ronald Reagan and County Road 175—such as width, speed limit, and commercial character—to be "legally irrelevant" because those factors are not specifically mentioned in PURA or the Commission's substantive rules.[8] But contrary to these parties' assertions, the Commission is not required to adopt a willfully blind approach to transmission line routing that treats every roadway as an equally acceptable place to build a transmission line, regardless of its size, use, or characteristics. The concept of following "compatible corridors" includes considering which corridors are ***qualitatively*** more compatible. For example, while the Commission typically gives weight to paralleling existing transmission lines, it does not give weight to paralleling pipeline rights-of-way because this has been determined not to be a qualitatively compatible corridor.[9] Similarly, the Commission has found that it can go beyond simply considering the *number* of habitable structures near a proposed route to analyze the individual characteristics and uses of those structures (an analysis which is not explicitly authorized in PURA or the Commission's rules).[10] Likewise, the Commission can look beyond the pure distance that a line will parallel roadways and consider qualitative differences in the different roads that could be followed, as it did here. The evidence in the record supports the Commission's finding that Ronald Reagan is a

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[7] LHO of County Road 175 Ex. 13 (Direct Testimony of Skyler Williams) at 4:1-20 (describing the neighborhoods on the south end of County Road 175).

[8] *See, e.g.*, Leander Motion for Rehearing at 17-22, Cedar Park Motion for Rehearing at 3.

[9] *See Rulemaking to Amend Substantive Rule 25.101, Relating to Certification Criteria*, Project No. 42740, Order Adopting Amendments to § 25.101 as Approved at the April 17, 2015 Open Meeting at 1 (Apr. 22, 2015) ("This intentional omission of pipelines from the list of compatible rights-of-way is intended to remove any preference for paralleling or utilizing pipeline rights-of-way while not prohibiting such consideration.").

[10] For example, in giving additional weight to the presence of a heavily-populated nursing home near a proposed route, the Commission found that it "may legitimately consider distinguishing features of various habitable structures in assessing prudent avoidance and route desirability more generally." *Application of LCRA TSC to Amend Its Certificate of Convenience & Necessity for a 138-Kv Transmission Line in Kerr County*, Docket No. 33844, Final Order at 2 (Mar. 4, 2008).

better place to put a transmission line, and the Commission should not modify that decision based on the complaints raised in motions for rehearing.

2) *LHO-1 maximizes the distance from residences and other habitable structures compared to CoL-1.*

Maximizing the distance of the line from residences was by far the greatest concern expressed by the community in response to LCRA TSC's questionnaires.[11] The direct input of the community itself, as opposed to the preferences of city council members representing only a select portion of the residents, has long been relied on as the best evidence of community values in selecting a route.[12] This factor favors selecting Route LHO-1. Not only does Route LHO-1 pass within 300 feet of ***less than half*** as many residences on Ronald Reagan as Route CoL-1 passes on County Road 175,[13] but as discussed in detail in Meritage's prior briefing, due to the relatively narrow setbacks used by the residential developments on County Road 175 compared to those on Ronald Reagan, there are also many additional homes along County Road 175 that are just slightly beyond 300 feet of the proposed line.[14]

Even if the local community had not placed great emphasis on maximizing the distance of the line from residences, the Commission's substantive rules still required it to consider the number of habitable structures within 300 feet of each proposed route. Route LHO-1 is superior

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[11] LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) pp. 4-5 (maximizing distance from residences was ranked as the most important concern by 51% of respondents).

[12] *See, e.g., Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties*, Docket No. 37488, Final Order at Finding of Fact 20 (Mar. 3, 2010) (finding that the route selected "satisfie[d] 'community values' ***as expressed on questionnaires filled out at LCRA TSC's open house meetings***") (emphasis added); *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for the Proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*, Docket No. 38354, Proposal for Decision at 17-18 (Dec. 16, 2010) (noting that the study area was diverse enough that there was no unified expression of community values, and instead relying on community input and questionnaires to determine community values); Docket No. 38354, Final Order at 6, Finding of Fact 21 (Jan. 24, 2011) (considering expressions of community values in a review of community questionnaires, letters, meetings, phone calls, and other public input).

[13] Along County Road 175, Route CoL-1 would pass within 305 feet of 39 single family residences, compared to only 16 on Route LHO-1 along Ronald Reagan. *See* Riverside Resources Ex. 3, Cross-Rebuttal Testimony of Harold L. Hughes (Hughes Cross-Reb.) at Attachment R-1.

[14] *See* Meritage Homes Reply to Exceptions at 7-13 (describing how Route CoL-1 down County Road 175 would run substantially closer to many homes in large residential developments that are just beyond 300 feet from its proposed centerline compared to Route LHO-1 down Ronald Reagan, where there are fewer residential developments and they are set back substantially from the road).

in this respect because it will be within 300 feet of 24 fewer habitable structures than Route CoL-1.[15] In motions for rehearing, some parties have disputed whether the number of habitable structures within 300 feet of the centerline is relevant, with Leander going so far as to claim that "the number of habitable structures within 300 feet of the centerline is not a statutory or regulatory routing criteria."[16] However, Leander ignores the explicit text of PUC Substantive Rule 25.101(b)(3)(B), which reads "The following factors shall be considered in the selection of the utility's alternative routes . . . ***owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less*** . . .."[17] That argument also ignores the long-standing Commission practice of considering habitable structures within 300 feet of the route centerline in order to both minimize the impact of the line on the local community and satisfy the Commission's policy of prudent avoidance.[18] Further, the Commission cannot reasonably consider every habitable structure in the study area, no matter how remote, and must draw a line somewhere for purposes of comparing various routes. The Commission was well-within its discretion to consider structures within 300 feet in order to comply with the statutory and rule requirements to consider the impacts on habitable structures.

3) LHO-1 protects the Southwest Williamson County Regional Park.

It is undisputed that both routes will provide reliable service to the area, which was the second highest-ranked community value. The third highest ranking priority expressed in response to LCRA's questionnaire was maximizing the distance of the line from parks and recreational areas.[19] This factor also weighs in favor of placing the line on Route LHO-1 and Ronald Reagan Boulevard.

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[15] *See* Riverside Resources Ex. 3 (Hughes Cross-Reb.) at Attachment R-1.

[16] Leander Motion for Rehearing at 9.

[17] Emphasis added.

[18] The motions for rehearing cite ***no*** precedent to support their argument that only structures within 60 feet of the centerline of a transmission project should be considered for purposes of the Commission's policy of prudent avoidance, and the Commission has long considered structures within 300 feet of the centerline of 138 kV lines when deciding whether a route complies with that policy. *See, e.g., Application of LCRA TSC to Amend Its Certificate of Convenience & Necessity for a 138-Kv Transmission Line in Kerr County*, Docket No. 33844, Final Order at 2-3 (Mar. 4, 2008) ("[T]he Commission emphasizes that it is impossible to devise a mathematical test, based on a count of habitable structures (***within 300 feet of a route's centerline, for example***) or anything else, to use as a definitive measure of the relative merits of various routes with respect to prudent avoidance.") (emphasis added).

[19] LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) pp. 4-5

Route CoL-1 would parallel the entire frontage of the Southwest Williamson County Regional Park along County Road 175. Along this path, the line would be within a few hundred feet of the largest, most heavily used park and recreational area in the study region—a park of such importance that it was singled out by the local community to be protected from the impact of this line.[20] Paralleling the frontage of this park does not comport with the community's stated desire to maximize the distance from recreational areas and parks, and because Route LHO-1 does not consistently parallel a park or recreational space at a close distance, the Commission was right to find that that route is a superior option for satisfying the community's desire to maximize the distance of the line from park and recreational areas.

The Commission did not err by weighting Route CoL-1's impact on the Southwest Williamson County Regional Park more heavily than Route LHO-1's impact on the Sarita Valley greenbelt. As discussed in detail in Meritage's prior briefing, Route LHO-1 crosses the Sarita Valley greenbelt at a single point, and does not parallel it for any distance. Importantly, this crossing occurs at a location where the greenbelt is ***already crossed by Ronald Reagan Boulevard*** via a massive concrete overpass, which is also paralleled by an existing distribution line.[21] These impacts are not remotely comparable. Both the length of the line parallel to the Southwest Williamson County Regional Park and the nature of the park itself compared to the Sarita Valley trail makes the crossing at link U4 on Route LHO-1 much more compatible with community values than the links paralleling County Road 175 on Route CoL-1.

In sum, the record is clear that Route LHO-1 is superior to Route CoL-1 under the factors that members of the local community ***directly identified*** as the most important values through LCRA TSC's questionnaires. These questionnaires represent the most direct, unfiltered feedback on what the ***entire*** community prioritizes with respect to the construction of this line, and the Commission should place a significant emphasis on satisfying the community's stated preferences. When looking at the values espoused by the entire community, Route LHO-1 was the clear choice, as reflected in the Commission's Order.

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[20] *See* Staff Ex. 1 (Poole Dir.) at 23:4-6 ("A very large number of intervenors objected to running lines down the area around Sam Bass Road and near Southwest Williamson County Regional Park, particularly on Segments V5 and D2.").

[21] *See* Meritage Homes Ex. 9 (Photo of Distribution Line at Ronald Reagan Blvd. and Brushy Creek).

B. The Commission has the discretion to assign less weight to the Cities' agreement on a particular route than the ALJs did, and it is irrelevant whether there was a signed document memorializing that agreement.

The motions for rehearing fixate on the Order's reference to the Cities as "signator[ies]" (rather than simply "parties") to an agreement to support Route CoL-1 in rejecting the ALJ's decision to give "great weight" to that agreement. Illogically, Leander, Cedar Park, and the Burleson Ranch appear to believe that if they can show that the agreement was not, in fact, written or signed as the Order suggests, then the Commission's rationale giving that agreement limited weight will somehow change. This makes no sense. Whether the agreement was signed or unsigned, written or unwritten, has no impact on the reasoning behind the Commission's decision not to grant that agreement "great weight" in its community values analysis.

The portions of the motions for rehearing that describe the Cities' agreement to support Route CoL-1 as an informal, unintentional alliance also represent an abrupt departure from prior messaging about that agreement. Leander,[22] Cedar Park,[23] and the Burleson Ranch[24] have spent this entire case emphasizing that the Cities negotiated extensively to reach a collective agreement on Route CoL-1, and used this collective effort to argue that the agreement should be given more weight than the community values expressed during LCRA TSC's open house process. These parties' repeated insistence that the Cities worked hard to reach an agreement, combined with testimony to that effect from Cedar Park witness Pat Wood,[25] led the ALJs to conclude that such an agreement existed and to place "great weight" on that agreement in recommending Route CoL-1.[26] Notably, when the PFD relied heavily on the existence of an agreement between the

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[22] Leander's Reply to Exceptions to the Proposal for Decision at 15 ("***The cities reached an agreement*** on an entire route.") (emphasis added).

[23] Cedar Park's Exceptions to the Proposal for Decision at 5 ("The cities . . . actively worked over the years to ***come to an agreement*** on a route.") (emphasis added).

[24] Burleson Ranch's Reply Br. at 20 ("all of the cities affected by the proposed project have ***reached an agreement***" . . . "the evidence shows that the level of cooperation of these municipalities is unprecedented.").

[25] Cedar Park Ex. 5 (Cross-Rebuttal Testimony of Pat Wood) at 11 ("I am further struck by the fact that all of the cities affected by the proposed project ***have reached an agreement*** to what route they can support.") (emphasis added).

[26] *See, e.g.*, Proposal for Decision (PFD) at 20 ("[T]he ALJs find that greater weight should be placed on ***the cities' agreement***, and therefore recommend COL-1.") (emphasis added); *id.* at 21 ("[T]he cities of Leander, Cedar Park, and Round Rock worked together with LCRA TSC to develop a route that all cities could agree on. . . . The ALJs weigh the cities ***agreement on routing*** and their work to establish one agreeable route heavily.") (emphasis added).

Cities to recommend their preferred route, none of the Cities or Burleson Ranch filed exceptions stating that "no such agreement exists – signed or not."[27] Now that the Commission has selected Route LHO-1, and stated explicitly that it would not place "great weight" on the agreement between the Cities, the same parties that spent months emphasizing the level of coordination between the Cities are tripping over themselves to contradict their prior characterizations of that agreement.

Ultimately, however, the nature of the agreement is inconsequential, as it was not the foundation of the Commission's route selection. The Commission's final order gave the agreement—however characterized—less weight than the ALJs recommended. Therefore, it is unclear what the Cities and Burleson Ranch hope to gain from this argument. At best, they can show that the Commission wrongly believed that there was a written, "signed," agreement between the Cities to support Route CoL-1. However, even if the Commission did make a slight factual misstatement by referring (outside of a finding of fact) to the Cities as "signator[ies]" to an agreement rather than just "parties," that would not be a reversible error because the Commission ***did not rely on the agreement to support its selection of Route LHO-1***.[28] To the contrary, the Commission only mentioned the agreement between the Cities in order to explain why it was ***not*** granting that agreement the same "great weight" it was given in the PFD. To the extent that the Commission believed that there was a written, signed agreement between the Cities, that fact only would have made the Commission more likely to grant the agreement "great weight."[29] Accordingly, even if Cedar Park, Leander, and Burleson's repeated insistence that the Cities had reached an agreement to support Route CoL-1 led the Commission to believe that that

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[27] Cedar Park Motion for Rehearing at 2.

[28] While there may not be evidence to support the Commission's reference to the Cities as "signator[ies]" to their agreement rather than "parties," a reviewing court will only reverse an agency decision because of the absence of substantial evidence if such absence has prejudiced the substantial rights of the litigant. *See Texas Health Facilities Comm'n v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 446, 452 (Tex. 1984). In other words, the Commission's characterization of the Cities' agreement as being signed is harmless and not grounds for granting rehearing.

[29] Although Leander reads great meaning into the Commission's statement that the Cities' agreement is "more akin to a non-unanimous stipulation" (NUS) than an agreement that resulted from give-and-take compromise, the Commission did not actually deem the Cities' agreement to be a NUS or treat it as such. *See* Leander Motion for Rehearing at 36-37. By comparing the Cities' agreement to a NUS, the Commission was merely explaining its rationale for not granting that agreement the "great weight" that it was assigned by the PFD, and did not purport to treat that agreement as something that it was not.

agreement was more substantial than it actually was, that error was harmless and did not affect the Commission's ultimate decision to select Route LHO-1.

C. The Commission did not have to orally vote at the May 18 Open Meeting for its Order to be valid.

Leander takes an overly formalistic view of the Texas Open Meetings Act to argue that the Commission's Order was unlawful because "no final vote was taken on the matter" at the May 18, 2017 open meeting.[30] However, there is no statute or rule that forces the Commission to vote orally at an open meeting in order to finalize a matter.[31] While the Texas Open Meetings Act does require administrative agencies to publicly resolve matters that were deliberated in closed, executive session,[32] there is no evidence that this matter was ever considered in closed session, and in any event, the Austin Court of Appeals has found, that "[t]he [Open Meetings] Act's purposes of allowing public access to and public knowledge of governmental decision-making are ***fully served by requiring the "actual resolution of an ultimate issue" to be made in public***."[33] And there is no doubt that the ultimate issue in this case was actually resolved at the May 18 Open Meeting. The Commission's discussion, motion, and second established the Commission's intentions regarding its final decision, which was then formalized in the Commission's signed Order. No reasonable person could have left the May 18 Open Meeting believing that the Commission had not resolved this case, and Leander cannot credibly allege that the Commission hid its deliberations from the public eye.

The cases that Leander cites describe the kind of secret deliberations that are ***actually*** improper under the Open Meetings Act. In *Webster v. Tex. & Pac. Motor Transp. Co.*, two commissioners met in a private unscheduled meeting, without the involvement of the third commissioner, and came to a final decision regarding a contested matter.[34] In *Field v. Anderson*, two board members of the Dallas Area Rapid Transit Authority met and agreed to a severance

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[30] Leander Motion for Rehearing at 49.

[31] *See, e.g.*, PUC Procedural Rule 22.263 (regarding form and content of final orders); Tex. Gov. Code § 2001.141 (regarding form of decisions).

[32] *See* Tex. Gov. Code § 551.102 (requiring public resolution of matters deliberated in a closed meeting, but not mandating an oral vote).

[33] *Texas State Bd. of Public Accountancy v. Bass*, 366 S.W.3d 751, 762 n. 10 (Tex. App.—Austin 2012, no pet.) (emphasis added) (quoting *Board of Trs. V. Cox Enters., Inc.*, 769 S.W.2d 86, 89 n. 4 (Tex. App—Texarkana 1984), *rev'd in part on other grounds*, 706 S.W.2d 946 (Tex. 1986)).

[34] *See Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 76-77 (Tex. 1942).

package without the remaining board members in attendance.[35] Those cases are inapposite to the situation here, where both sitting commissioners were in attendance at a public open meeting and publicly deliberated to decide this matter.

Leander also claims that the Commission violated *Robert's Rules of Order*, but while those rules may be used by governmental bodies when conducting meetings, they are not binding upon the Commission, let alone dispositive in this situation. If the Commission intended for its meetings to be strictly conducted according to *Robert's Rules*, it would have to formally adopt them into its procedural rules.[36] The Commission has not bound itself to *Robert's Rules*,[37] so its failure to follow those rules during the May 18 Open Meeting has no legal effect on its Order. As such, there was no procedural flaw in the way the Commission reached its Order that would provide grounds for rehearing.

D. The public comment process was procedurally proper and does not provide a grounds for reversal.

At the May 18 Open Meeting, the Commission followed its longstanding practice of allowing affected landowners to provide public comment, rather than taking additional argument from the attorneys of represented parties. The attorneys of represented parties were given ample opportunity to present their positions at the administrative hearing and in briefing to the Commission. Attorney jockeying can overwhelm and supplant the purpose of the Open Meeting discussion, which was to solicit public comment. The Commission is well within its discretion to limit public comment to affected landowners, giving them an opportunity to speak directly to the Commissioners. As the Commission's rules make clear, public comment is not evidence,[38] so it is not necessary to give attorneys a chance to cross-examine individual commenters or present substantive rebuttal to their claims. Further, the Commission prevented ***all*** attorneys from speaking at the open meeting, so no party was placed at a unique disadvantage due to their

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[35] *See Fielding v. Anderson*, 911 S.W.2d 858 (Tex. App.—Eastland 1995, writ denied).

[36] *Cf.* Tex. Att'y Gen. Op. No. DM-228 at p. 1185 (1993) (finding that a Commissioner's Court was not required to conduct its meetings pursuant to *Robert's Rules of Order*, but could formally vote to adopt those rules to make them binding if it so desired).

[37] *See generally* PUC Procedural Rules.

[38] *See* 16 TAC § 22.221(e) ("Public comment is not part of the evidentiary record of a contested case.").

paid advocates being unable to speak.[39] Finally, the Cities waived any objection to the way in which the Commission conducted the May 18 Open Meeting because they failed to raise a timely objection.

Cedar Park also incorrectly claims that the Commission erred by allowing non-parties to provide public comment at the May 18 Open Meeting. However, the Commission's procedural rules explicitly allow it to permit non-party "protestors" to present public comment on pending cases.[40] Therefore, the Commission was well within its rights to allow non-parties to provide their thoughts on the line.

III. CONCLUSION

For the reasons discussed above, the Commission should deny all motions for rehearing and thereby uphold its well-reasoned decision to select Route LHO-1, which follows a more compatible commercial corridor along Ronald Reagan Boulevard, avoids individual homeowners' front yards on County Road 175, better comports with the community values expressed during the Open House process by all citizens in the study area, and impacts fewer habitable structures than CoL-1, while remaining in the top third for lowest cost. Route LHO-1 is the best choice considering the routing factors provided in the statute and Commission rules, and the Commission was correct to select it for the Leander to Round Rock line.

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[39] It is worth noting that representatives from the Cities were permitted to speak with the Commission at great length and present arguments in favor of their chosen route, so it is not as if the public comment process was one-sided.

[40] *See* 16 TAC § 22.102(c) ("**Protestors.** Any person that has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party. ***The presiding officer may allow oral or written comments to be made by protestors.***") (emphasis added).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for Meritage Homes, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 17th day of July, 2017 by electronic mail, facsimile and/or First Class, U.S. Mail, Postage Prepaid.

Michael McMillin