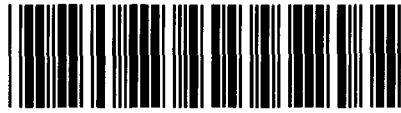




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BEFORE THE STATE OFFICE

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APPLICATION OF RAYBURN §
COUNTRY ELECTRIC COOPERATIVE §
TO AMEND A CERTIFICATE OF §
CONVENIENCE AND NECESSITY FOR §
THE LOWER BOIS D'ARC WATER §
TREATMENT PLANT 138-KV §
TRANSMISSION LINE PROJECT IN §
FANNIN AND HUNT COUNTIES, §
TEXAS §

OF

ADMINISTRATIVE HEARINGS

INITIAL BRIEF

OF

THE ROUTE MOD L ALLIANCE

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SEPTEMBER 13, 2018

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INTERVENOR(S)	ROUTE SUPPORTED	LEGAL REPRESENTATION
<u>Route Mod L Alliance:</u> Linda Lee Leslie, Hot House Plants Limited Partnership, Hank Mastellar, Mark and Morgan, William Roberts, and Ray Jack Roberts	Route Mod L	Patrick L. Reznik Braun & Gresham, PLLC
<u>The Northern Alliance</u> Paul Gant, Billy R. Gant, Trustee, James Stone III, Robert W. Irish, Jr., Ron Wahlquist, T.W.M. Long III, and Robert Peace	Route Mod L	Tyler Topper Burdett, Morgan, Williamson & Boykin, LLP
<u>South Internvenors</u> Jay Norman, Frances Dyer Hickman, Ben M. Dyer, and Jack Norman	Route Mod L	Bradford W. Bayliff Bayliff Law Firm
Bill Hardin, Barry Stephan Goodman Jr, Steve Goodman, Alan McDonald, Jane Lindsey Paul	Route Mod L	Reid Barnes Lynn Sherman Law Firm and Consulting
Margaret Fritz	Route Mod L	Pro Se
Ronney and Laura Thompson	Route Mod L	Pro Se
Jeremiah Gilliland	No opposition to Route Mod L or Route Mod L-23A	Pro Se
Huan Yang aka Cathy Yang	Route Mod L-23A	Pro Se

**SOAH DOCKET NO. 473-18-2500
PUC DOCKET NO. 47884**

APPLICATION OF RAYBURN	§	BEFORE THE STATE OFFICE
COUNTRY ELECTRIC COOPERATIVE	§	
TO AMEND A CERTIFICATE OF	§	
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TEXAS	§	ADMINISTRATIVE HEARINGS

**INITIAL BRIEF OF
ROUTE MOD L ALLIANCE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COME NOW Linda Lee Leslie, Hot House Plants Limited Partnership, Hank Mastellar, Mark Morgan, Phyllis Morgan, William Roberts, and Ray Jack Roberts (collectively, the “Route Mod L Alliance”) offer this initial brief in the Joint Application of Rayburn Country Electric Cooperative (“Rayburn” or Applicant”) to Amend its Certificate of Convenience and Necessity (“CCN”) for the Lower Bois D’Arc Water Treatment Plant 138-kV Transmission Line in Fannin and Hunt Counties, Texas (“Application” or “Project”).

On August 28, 2018, the Administrative Law Judge (“ALJ”) conducted a Hearing on the Merits and admitted the pre-filed Direct Testimonies of the Route Mod L Alliance. The Route Mod L Alliance have an interest in this Project because certain proposed routes and segments come within their individual property boundaries, bisect their property, or parallel their property boundaries. The Route Mod L Alliance supports the selection of Route Mod L and opposes any Route using Segments 34, 40, 41, 42, 43, 44, 45, 46 or 47. The Route Mod L Alliance also opposes Rayburn’s recommended Route L using Segments 34, 41, 43, 45 and 46. The Mod L

Alliance respectfully requests that the ALJ's Proposal for Decision ("PFD") recommend, and ultimately the PUC Final Order approve, Route Mod L.

I. EXECUTIVE SUMMARY

- "Route Mod L" is comprised of Segments 1-10-12-16-17-21-22-23B-25-33-35-48-51-50-53A-57. "Route Mod L" uses Segments 35-48-51-50 rather than Segments 34-41-43-45-46.
- Route Mod L should be approved for construction as it best meets and balances the quantitative and qualitative routing criteria listed in Public Utility Regulatory Act ("PURA") § 37.056 and 16 Tex. Admin. Code ("TAC") § 25.101, especially with regards to the Project area community values, expressed by multiple parties, residents, and government officials.
- Route L should not be used as it is not the route that best meets the routing criteria listed in PURA § 37.056 and 16 TAC § 25.101, and would result in the unnecessary bisecting of property which is inconsistent with Public Utility Commission of Texas ("Commission") policy.

II. INTRODUCTION

At the August 28, 2018 hearing on the merits, the evidence was focused on two routes: Route Mod L and Route Mod L-23A. All but one of the remaining Intervenors support Route Mod L. Ms. Cathy Yang supports Route Mod L-23A. Route Mod L minimizes the impact of the proposed transmission line in the Project area and is the best alternative to meet the criteria contained in PURA and under Commission rules. This route is also the most specifically tailored route to address the community values of the Project area. Additionally, this route has the fewest number of habitable structures, has acceptable length that parallels existing compatible right-of-

way (“ROW”) and apparent property boundaries, conforms to the Commission’s policy of prudent avoidance, and does not unnecessarily bisect the land of individual property owners.

Route Mod L is the most specifically tailored route to address the community values of the Project area, and the community has acknowledged that. The Route Mod L Alliance and all but one Intervenor represent the “community values” of the Project area, and have spoken unequivocally: *use Route Mod L*.

This case can be synthesized simply. When comparing these two almost identical routes, should the Commission elect to use a route that is favored by all but one intervening party, or should the Commission select a route that is supported by one party to this proceeding?

“The plain language of the rule grants the [Commission] authority to consider and weigh a variety of factors—engineering constraints, costs, grid reliability, and security, along with the criteria in PURA § 37.056—in addition to use of existing rights-of-way in determining the most reasonable route for a transmission line.”¹ Being given authority to consider and weigh the various routing factors, “the [Commission] may in some cases be required to adjust or accommodate the competing policies and interests involved.”² “[N]o one factor controls or is dispositive.”³ *Weighing all of the criteria, and the hefty weight of community values, Route Mod L is the best suited route.*

¹ *Dunn v. Public Util. Comm’n of Tex.*, 246 S.W.3d 788, 795 (Tex. App.—Austin 2008, no pet.).

² *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985, writ ref’d n.r.e.).

³ *Dunn*, 246 S.W.3d at 795.

1. Order of Referral and Preliminary Order: Which proposed transmission line route is the best alternative, weighing the factors set forth in PURA § 37.056(c) and 16 TAC 25.101(b)(3)(B)?

A. Equal or Comparable Factors

The proceeding focused on iterations of two commonly preferred routes, Route Mod L and Route Mod L-23A. These two routes share equal quantitative characteristics on the majority of routing criteria in Rayburn's Environmental Data, and on some other factors their differences are of no statistical significance.⁴ With a focus on brevity, Route Mod L Alliance will focus its analysis of the routes on those quantitative and qualitative factors in which the two routes primarily split. These factors are community values, habitable structures and cost.

B. Route

"Route Mod L" is comprised of Segments 1-10-12-16-17-21-22-23B-25-33-35-48-51-50-53A-57. "Route Mod L" uses Segments 35-48-51-50 rather than Segments 34-41-43-45-46. While the Applicant identified Route L as their recommended route, the Applicant's rebuttal testimony conceded Route Mod L satisfies the applicable and statutory and regulatory criteria.⁵ Furthermore, Commission Staff identified Route Mod L as the route that best meets the applicable statutory and regulatory criteria.⁶ For these reasons, as more fully discussed below, Route Mod L, while slightly more costly than Route L, meets the statutory and regulatory criteria even better than Route L and Route Mod L-23A and is better than any other route in the Application or proposed by other parties to this proceeding.

⁴ See Applicant's RCEC Ex. 11 at TABLE 6-1A; Rebuttal Testimony of Lara Zuzak, Applicant RCEC Ex. 6 Table 6-1A, at 76.

⁵ See Rebuttal Testimony of Lara Zuzak, Applicant RCEC Ex. 6 at 36; Rebuttal Testimony of Stephen Geiger, Applicant RCEC Ex. 5 at 19.

⁶ See Direct Testimony of John Poole, Staff Ex. 1 at 25-44.

C. Community Values

The community values expressed in this Project favor selection of Route Mod L. The term “community values” is not defined by statute or in the Commission rules.⁷ In several CCN dockets, the Commission and Commission Staff have recognized a working definition of “community values” as “a shared appreciation of an area or other natural resource by a national, regional, or local community.”⁸

To address and consider community values, Applicant solicited input from a wide range of federal, state, and local government agencies and conducted public open house meetings.⁹ The “community values” that were expressed throughout the consideration of this Project can be placed into three categories, all of which support the selection of Route Mod L: (1) private citizen input received by Applicant prior to the filing of the Application; (2) the expressions and testimony made by Intervenors; and (3) the evidence presented at the hearing on the merits. The overwhelming expression of community values in the Direct Testimonies, Rebuttal Testimonies and at the hearing on the merits supports the selection of Route Mod L.

D. Historical and Aesthetic Values

As raised by Commission Staff in this proceeding, “I believe Route Mod L ... is acceptable for a historical values perspective, and I believe its other strengths further warrant its

⁷ See *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for the Zorn-Marion 345-kV Transmission Line Project in Guadalupe County*, Docket No. 45601, Final Order at 9, Finding of Fact No. 53 (Sept. 15, 2016) (“The term community values is not formally defined by statute or in the Commission’s rules.”)

⁸ *Id.*; see also “[A] shared appreciation of an area or other natural or human resource by a national, regional, or local community. Adverse affects upon community values consist of those aspects of a proposed project that would significantly and negatively alter the use, enjoyment, or intrinsic value attached to an important area or resource by a community.” *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 345-kilovolt Double-circuit Line in Caldwell, Guadalupe, Hays, Travis and Williamson Counties, Texas*, Docket No. 33978, Order at FoF 118 (Oct. 10, 2008).

⁹ Applicant’s RCEC Ex. 1.

selection.”¹⁰ “I therefore conclude that aesthetic values would be impacted throughout the study area, and that these temporary and permanent negative aesthetic effects will occur on any route approved by the Commission. However, Route Mod L ... is the third shortest which would help to mitigate those impacts.”¹¹

E. Environmental Integrity

TPWD did not intervene in this proceeding. As raised by Commission Staff in this proceeding, “Route Mod L ... has the fourth least amount of length crossing woodlands, and it is also the third shortest route in general. According to the criteria posted by Adkins in the EA, Route Mod L ... performs reasonably in most listed categories.”¹²

F. Engineering Constraints

The Applicant has not described any special engineering constraints.

G. Existing Compatible ROW, Bisecting of Property, Prudent Avoidance, Costs

i. Existing Compatible ROW and Apparent Property Boundaries

Route Mod L parallels existing compatible ROW and apparent property boundaries for approximately 72.88% of its length as compared to Route L, which parallels approximately 62.06% of its length.¹³ Route Mod L is the best suited route for this Project as compared to Route L.

ii. Bisecting of Property

In an open meeting discussion concerning an LCRA transmission line case, on April 23, 2010, Commissioner Donna Nelson stated her view as follows:

¹⁰ See Direct Testimony of John Poole, Staff Ex. 1 at 22.

¹¹ See Direct Testimony of John Poole, Staff Ex. 1 at 22-23.

¹² See Direct Testimony of John Poole, Staff Ex. 1 at 24.

¹³ See Direct Testimony of John Poole, Staff Ex. 1 at 30.

And America as a country was settled by people who moved here so they could have their own land. My grandfather was an original settler up in South Dakota, and my dad was a farmer, and my sister is a farmer. And I think we need to be very careful when we build a transmission lines across people's property. Sometimes it's unavoidable. Sometimes it has to be done. ***But before we build transmission lines against - through people's property, we need to look at whether we can go along property lines.***¹⁴

The Commission has followed this line of thinking in transmission cases, adopting an ALJ's PFD in Commission Docket No. 38230.¹⁵ The Commission adopted the PFD in that case in which the ALJ reviewed the intervenor maps and determined that the route that bisected multiple property owners presented "serious problems" to those landowners and would have a significant negative effect on a landowner, when compared to other links which merely followed county roads and *property boundaries*.¹⁶ Simply looking at the intervenor map,¹⁷ one can see how Segments 34 and 43 of Route L present "serious problems" bisecting the properties of Intervenors Morgan and Roberts (Route Mod L Alliance), while Segment 35 of Route Mod L parallels the Morgan property boundary, which he is willing to accept.¹⁸ Using Segment 50 of Route Mod L rather than Segment 46 minimizes the impact on the Intervenor Thompson property. Of course Route Mod L-23A uses Segment 23A in lieu of bisecting Intervenor Ms. Yang's property using Segments 21 and 22. Route Mod L and Route Mod L-23A comply with the Commission's policy.

¹⁴ Open Meeting Tr. at 11-12 (Apr. 23, 2010) (Emphasis added).

¹⁵ *Application of Lone Star Transmission, LLC for a Certificate of Convenience and Necessity for the Central A to Central C to Sam Switch/Navaro 345-kV Crez Transmission Line*, Docket No. 38230, Final Order at 2 (Nov. 17, 2010).

¹⁶ Docket No. 38230, Proposal for Decision at 19, 26-27 (Oct. 22, 2010).

¹⁷ Applicant's RCEC Ex. 10.

¹⁸ See Direct Testimony of Mark and Phyllis Morgan, Ex. Mod L 3 at 8, 10.

iii. Prudent Avoidance¹⁹

The proposed transmission line has been routed in accordance with the Commission's policy of prudent avoidance.²⁰ Route Mod L complies with the Commission's policy of prudent avoidance.

iv. Habitable Structures²¹

Route Mod L has only 16 habitable structures within 300 feet of the proposed lines right of way centerline. Route Mod L has one more at 17 and Route Mod L-23A has five more at 21.²²

v. Length and Cost

There are a number of benefits typically derived from selecting a shorter transmission line route as opposed to a longer one. The benefits may include lower total costs and better conformance with the policy of prudent avoidance because fewer acreages will be exposed to electric and magnetic fields. Route Mod L is the third shortest route at 12.98 miles and is slightly shorter than Route Mod L-23A, which is 13.09 miles.²³ Route Mod L is only 2.6% (0.33 miles) longer than Route L, which is the shortest route.²⁴

The estimated costs of the Project range from approximately \$8,822,533.99 to \$12,340,489.71.²⁵ Route Mod L is estimated to cost \$9,165,063.44, while Route Mod L-23A is

¹⁹ "Prudent avoidance" is defined as "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort." PUC SUBST. R. 25.101(a)(4); *see also* PUC SUBST. R. 25.101(b)(3)(B).

²⁰ *See* Rebuttal Testimony of Lara Zuzak, Applicant RCEC Ex. 6 at 20.

²¹ PUC SUBST. R. 25.101(b)(3)(B); PUC Subst. R. 25.101(a)(3); "Habitable Structures" is defined as "structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools."

²² *See* Applicant's RCEC Ex. 11 at TABLE 6-1A; Rebuttal Testimony of Lara Zuzak, Applicant RCEC Ex. 3 Table 6-1A, at 76.

²³ *See* Applicant's RCEC Ex. 11 at TABLE 6-1A.

²⁴ *See* Rebuttal Testimony of Stephen Geiger, Applicant RCEC Ex. 5 at 19.

²⁵ *See* Rebuttal Testimony of Stephen Geiger, Applicant RCEC Ex. 5 at 31.

estimated to cost \$9,755,518.51.²⁶ Route Mod L is the third least expensive route at only \$342,529.45 more than Route L. Route Mod L-23A is the seventh least expensive route and is \$932,984.52 more than Route L. In other words a 3.9% increase as compared to a 10.6% increase.

III. CONCLUSION

The Route Mod L Alliance, all but one Intervenor, the Applicant, and Commission Staff support the adoption of Route Mod L based on the foregoing discussion. Specifically, Route Mod L is comparable to, or superior to, the other most commonly supported routes based on the evidence and quantitative criteria provided in the application and is far superior in the qualitative criteria of community values than any other route presented in this proceeding.

Respectfully submitted,

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²⁶ *Id.*

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 13, 2018, in accordance with SOAH Order No. 2 issued in this docket.

Patrick L. Reznik