



Filing Receipt

Received - 2022-09-01 02:14:55 PM
Control Number - 53727
ItemNumber - 144

**SOAH DOCKET NO. 473-22-05831
PUC DOCKET NO. 53727**

JOINT APPLICATION OF AEP TEXAS INC.	§	BEFORE THE STATE OFFICE
AND SHARYLAND UTILITIES, L.L.C. TO	§	
AMEND THEIR CERTIFICATES OF	§	OF
CONVENIENCE AND NECESSITY FOR THE	§	
LA PALMA TO KINGFISHER DOUBLE-	§	ADMINISTRATIVE HEARINGS
CIRCUIT 345-KV TRANSMISSION LINE IN	§	
CAMERON COUNTY	§	

REBUTTAL TESTIMONY

OF

GARY L. MCCLANAHAN, JR.

ON BEHALF OF APPLICANTS

AEP TEXAS INC. AND

SHARYLAND UTILITIES, L.L.C.

SEPTEMBER 1, 2022

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PURPOSE OF TESTIMONY	1
III. RESPONSES TO GENERAL POSITIONS COMMON TO INTERVENORS' TESTIMONY	3
IV. RESPONSES TO SPECIFIC INTERVENOR TESTIMONY	17
A. Response to Jose A. Quintanilla	17
B. Response to Michael Fitzpatrick	17
C. Response to Blanca Chapa and Flores et al. (Zobeyda Morales, Martha Reyna, Sonia Flores, and Maria Teresa Guerra)	19
D. Response to the Ogdees	19
E. Response to The Direct Testimony of Brian C. Andrews On Behalf of Gobar Brothers, LLC	20
F. Response to The Direct Testimony of Victor M. Gutierrez, Jr., P.E. On Behalf of Gobar Brothers, LLC	23
V. RESPONSE TO COMMISSION STAFF	25
VI. CONCLUSION	25

ATTACHMENT

Attachment GLM-1R Intervenor Map

I. INTRODUCTION

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Gary L. McClanahan, Jr. My business address is 7600B North Capital of
3 Texas Highway, Suite 320, Austin, Texas 78731.

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am employed by POWER Engineers, Inc. ("POWER") as a Project Manager and
6 recently promoted to a Department Manager in POWER's Environmental Division.

7 Q. ARE YOU THE SAME GARY L. MCCLANAHAN, JR. WHO PREVIOUSLY
8 FILED DIRECT TESTIMONY IN THIS DOCKET?

9 A. Yes, I filed direct testimony in this docket on behalf AEP Texas Inc. ("AEP Texas")
10 and Sharyland Utilities, L.L.C. ("Sharyland") (collectively, the "Joint Applicants").

II. PURPOSE OF TESTIMONY

11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

12 A. The purpose of my rebuttal testimony is to respond to concerns raised by numerous
13 intervenors regarding the routing of the La Palma to Kingfisher 345-kilovolt ("kV")
14 transmission line (the "Project"). Many intervenors raise common concerns regarding
15 aesthetics, property values, and impacts to current or future land uses. Accordingly, I
16 will address their concerns by grouping together those with common concerns and
17 responding on that basis. Then, where appropriate, I will address specific intervenor
18 testimony and concerns. Finally, I will address the testimony submitted on behalf of
19 the Staff of the Public Utility Commission of Texas ("Commission").

1 My discussion of the Commission's routing criteria and requirements is based on my
2 experience in developing and presenting environmental assessment and routing analyses
3 to comply with Commission routing criteria and requirements in my role of
4 environmental consultant. I am not an attorney and do not purport to present legal
5 opinions.

6 **Q. WERE YOUR TESTIMONY PREPARED BY YOU OR UNDER YOUR**
7 **SUPERVISION?**

8 A. Yes, they were.

9 **Q. IS THE INFORMATION CONTAINED IN YOUR TESTIMONY TRUE AND**
10 **CORRECT TO THE BEST OF YOUR KNOWLEDGE?**

11 A. Yes, it is.

12 **Q. DID POWER PREPARE A MAP IDENTIFYING THE LOCATION OF**
13 **INTERVENOR PROPERTIES IN RELATION TO THE TRANSMISSION LINE**
14 **ROUTE ALTERNATIVES?**

15 A. Yes. Based on information obtained from the Cameron County Appraisal District and
16 property ownership information included in the application and in this docket, POWER
17 identified parcels owned by intervenors that are either crossed or within 500 feet of the
18 centerlines of the alternative routes. The Intervenor Map is available on the
19 Commission's interchange as item number 128 for this docket. I have also provided
20 this map as Attachment GLM-1R. This map reflects the current intervenors and was
21 updated after certain intervenors were dismissed.¹

¹ See SOAH Order No. 5 (Aug. 24, 2022).

**III. RESPONSES TO GENERAL POSITIONS COMMON TO
INTERVENORS' TESTIMONY**

1 **Q. AFTER REVIEWING THE DIRECT TESTIMONIES OF THE INTERVENORS**
2 **IN THIS PROCEEDING, DO YOU HAVE ANY GENERAL OBSERVATIONS**
3 **ABOUT THE NATURE OF THE POSITIONS TAKEN?**

4 A. Yes, I do. It has been my observation in working on transmission line cases for many
5 years that many landowners will oppose the routing of a proposed transmission line
6 across or near their property, and this proceeding is no exception. Many of the
7 landowners feel very strongly that they should not be burdened with having the line
8 routed across their property or within sight of their property. This concern is
9 understandable. In fact, the issues the landowners raise regarding why the transmission
10 line should not be routed near them could be equally applied to many other properties
11 within the study area.

12 Some intervenors argue their property should be excluded from consideration because
13 of future plans to develop their property. As I detail below, the Commission does not
14 typically consider future development (post-notice construction) in the routing of a
15 transmission line. Some intervenors also argue that certain routes should be excluded
16 from consideration because it will devalue their property. As I explain below, this is
17 also an issue that the Commission does not typically consider in evaluating transmission
18 line routes.

1 In general, the landowner intervenors all raised similar concerns relating to the potential
2 impact on their property, including property devaluation, driving under or near the line,
3 third-party access, “buzzing,” health and safety, aesthetics, environmental concerns, and
4 impairment of existing and future land uses. I am sensitive to these concerns, but they
5 are commonly shared concerns among landowners and do not provide a clear basis for
6 distinguishing between the routes. In other words, no matter where the Project is
7 located, the transmission line will be visible, and someone’s property is going to be
8 directly affected.

9 The views presented in intervenor testimony do not demonstrate that any of the links
10 proposed by the Project are not constructible based on the factors the Commission
11 considers in evaluating routes for proposed transmission line projects. I conclude that
12 none of the concerns raised by intervenors would render any routes or links proposed as
13 impracticable or inappropriate for consideration by the Commission in this proceeding.

14 **Q. WHAT IS YOUR RESPONSE TO INTERVENOR CONCERNS REGARDING**
15 **ELECTROMAGNETIC FIELDS (“EMFs”) AND HEALTH AND SAFETY?**

16 A. It is my understanding that EMFs are invisible lines of force present in the natural
17 environment and wherever electricity flows. Sources of EMFs include electric power
18 lines, electrical wiring in homes and businesses, home appliances, office equipment,
19 electric tools, and hospital diagnostic equipment. The strength of EMFs from power
20 lines decreases dramatically with distance.

1 According to the National Institute of Environmental Health Sciences, scientific studies
2 over the past several decades have explored the possibility of health effects from EMF
3 exposure. While some of the studies have indicated some statistical associations
4 between EMFs and certain health effects, the majority of research has found no such
5 association. Significantly, laboratory research has not shown any causal relationship
6 between EMF exposure and cancer or any other adverse health effects.

7 **Q. SOME INTERVENORS EXPRESSED CONCERN OVER THE PROJECT'S**
8 **PROXIMITY TO HABITABLE STRUCTURES. DID POWER CONSIDER**
9 **HABITABLE STRUCTURES IN DEVELOPING THE PROPOSED ROUTES?**

10 A. Yes. As is typical in certificate of convenience and necessity ("CCN") proceedings,
11 some intervenors in this case raised concerns regarding the proximity of the routes to
12 habitable structures on their property. POWER and Joint Applicants avoided routing
13 the project near (i.e., within 500 feet of) habitable structures where practical, while also
14 considering other Commission routing criteria (e.g., paralleling or utilizing existing
15 electric facilities, paralleling or utilizing other existing compatible rights-of-way
16 ("ROW"), and paralleling property lines or other natural or cultural features), in addition
17 to balancing the need for an adequate number of reasonably differentiated alternative
18 routes to conduct a proper evaluation. Due to the congested nature and limited routing
19 opportunities in the study area, it was not feasible to locate a route without any habitable
20 structures within 500 feet. In my experience, the number of habitable structures within
21 500 feet of the proposed routes in this study area is consistent with what I have seen in
22 other projects with similar congested areas.

1 **Q. WHAT IS YOUR RESPONSE TO INTERVENORS WHO CLAIM THE LINE**
2 **SHOULD NOT BE ROUTED NEAR OR ON THEIR PROPERTY BECAUSE IT**
3 **WOULD HARM THE AESTHETICS OF THE AREA?**

4 A. I understand many individuals do not want to see transmission lines from their home or
5 property and are concerned about how the transmission line may affect the visual quality
6 of current and future planned development. However, the Commission has established
7 a need for this Project; therefore, this transmission line must be placed in this area and
8 will be visible wherever it is located. I understand many individuals do not like to look
9 at transmission lines, especially on private property. This is a common concern in these
10 proceedings; however, it is difficult to attempt to assess aesthetic impacts to private
11 individuals.

12 Federal agencies and the Commission, which consider aesthetics in their actions, usually
13 evaluate aesthetics from a public standpoint, and then consider the balancing of aesthetic
14 impacts with numerous other appropriate considerations. Personal aesthetic opinions
15 generally do not provide an objective basis for evaluating alternative routing options.
16 This is particularly true when several intervenors argue that their property is
17 aesthetically significant and will be adversely impacted by a transmission line. When a
18 subjective factor such as aesthetics is vigorously asserted by every landowner in a CCN
19 case, the factor loses much significance as a metric for deciding where a transmission
20 line should be constructed.

1 **Q. SOME INTERVENORS RAISED ENVIRONMENTAL CONCERNS. HOW DO**
2 **YOU RESPOND?**

3 A. The Public Utility Regulatory Act (“PURA”) requires the consideration of
4 environmental integrity as a factor in considering the approval of a transmission line,
5 and potential impacts to wildlife are a part of environmental integrity. POWER and
6 Joint Applicants took potential impacts to wildlife into consideration in balance with
7 other factors to minimize impacts on wildlife to the extent practicable.

8 One of the primary purposes of the Environmental Assessment (“EA”) was to assess
9 potential environmental constraints and impacts relating to the project. POWER has
10 evaluated each of the routes proposed in this proceeding from an environmental and
11 land use perspective, considered environmental concerns in its route evaluation and
12 ranking, and provided recommendations when appropriate to mitigate potential
13 environmental impacts.

14 **Q. HOW DO YOU RESPOND TO CONCERNS WITH CROSSING THE RESACA**
15 **DE LOS FRESNOS, TREE REMOVAL, POTENTIAL IMPACTS TO**
16 **WILDLIFE HABITAT, AND THREATENED AND ENDANGERED SPECIES?**

17 A. All of the routes must cross the Resaca de los Fresnos, and construction of the project
18 will require removal of some woody vegetation/brush within the ROW regardless of
19 which route is selected. However, POWER’s ranking of the alternative routes and
20 recommendation of Route 4 from an overall environmental and land use perspective
21 took into consideration routes that best avoid and minimize impacts to wildlife habitat.

1 Many landowners in this region of Texas have spent resources maintaining or clearing
2 land for agricultural purposes or to enhance wildlife habitat. Some landowners (e.g.,
3 GOBAR Brothers L.L.C.) are currently clearing land of trees and brush for future
4 planned development. Depending on the final approved route, this line may provide
5 some limited assistance with brush control.

6 Wherever reasonable and practical, POWER and the Joint Applicants delineated
7 alternative links to utilize and/or parallel existing cleared electric facilities' ROW and
8 corridors, such as electric facility and other utility ROW, other existing compatible
9 ROW, roads, apparent property boundaries, and other natural and cultural features such
10 as edges of timber or fence lines to minimize and limit new habitat fragmentation. This
11 practice does not increase the incidences of fragmentation, but does increase the width
12 of the existing cleared area. Many wildlife species are "edge" adapted species, which
13 may benefit from the habitat edge effect resulting from cleared ROW.

14 The EA identifies and discusses the potential of the Project to impact state and federal
15 listed threatened/endangered species that potentially occur within the study area. As
16 discussed in the EA, none of the alternative routes cross any known habitat or designated
17 critical habitat for federally-listed threatened or endangered species. If any potential
18 threatened or endangered species habitat is identified during field surveys of the
19 Commission-approved route, Joint Applicants will coordinate with the proper agencies
20 as needed to determine avoidance or mitigation strategies.

1 **Q. CAN YOU DESCRIBE ANY MITIGATION MEASURES JOINT APPLICANTS**
2 **TAKE IN CONSTRUCTING TRANSMISSION LINES TO ADDRESS THE**
3 **POTENTIAL IMPACTS TO MIGRATORY BIRDS?**

4 A. Impacts to wildlife and fisheries resources including migratory birds are addressed in
5 Section 4.6.4 of the EA. Migratory birds are expected to inhabit the study area as
6 residents or seasonal migrants that pass through the study area and potentially occupy
7 habitats temporarily or seasonally. The Project is not anticipated to have adverse
8 impacts to these species. The Commission typically orders applicants to protect raptors
9 and migratory birds as outlined in the following publications: *Reducing Avian Collisions*
10 *with Power Lines: State of the Art in 2012*, Edison Electric Institute and Avian Power
11 Line Interaction Committee, Washington, D.C. 2012; *Suggesting Practices for Avian*
12 *Protections on Power Lines: The State of the Art in 2006*, Edison Electric Institute,
13 Avian Power Line Interaction Committee, and the California Energy Commission,
14 Washington, D.C. and Sacramento, CA 2006; and *Aviation Protection Plan Guidelines*,
15 Avian Power Line Interaction Committee and United States Fish and Wildlife Service,
16 April 2005.

17 The Joint Applicants will take necessary steps to comply with the Migratory Bird Treaty
18 Act and will use appropriate avian protection measures in accordance with their
19 respective company-wide Avian Protection Plans, which are developed and
20 implemented according to the listed publications.

1 **Q. SOME INTERVENORS RAISED CONCERNS WITH THE IMPACT OF THE**
2 **PROJECT ON CURRENT LAND USES SUCH AS AGRICULTURAL**
3 **ACTIVITIES. HOW DO YOU RESPOND?**

4 A. I do not believe the Project will have any significant adverse effects on agricultural
5 activities. The landowner retains ownership of the land within the ROW and can
6 generally continue to use the land for agricultural and other purposes after construction.
7 Only a small amount of land around and under the transmission structures will be lost
8 to grazing, cultivation, or other uses. Utility companies in this state regularly deal with
9 electric lines crossing agricultural lands, and loss of land use from the surface area of
10 the structures is something addressed during easement acquisition.

11 **Q. SEVERAL INTERVENORS (MICHAEL FITZPATRICK, GOBAR**
12 **BROTHERS, L.L.C., ERNESTRO ESTRADA, DAVID FLOODMAN, MANUEL**
13 **AND EVELIA DURAN, JR.) EXPRESS CONCERNS THAT THE PROJECT**
14 **WOULD ADVERSELY AFFECT FUTURE DEVELOPMENT ON THEIR**
15 **PROPERTY(IES). SHOULD THIS BE A CONSIDERATION IN THE**
16 **SELECTION OF A ROUTE?**

17 A. I do not believe that speculative and future (post-notice construction) land uses should
18 be a consideration in approving a route for the Project. Based on my knowledge and
19 experience, future land use is not typically considered by the Commission in CCN
20 dockets due to the uncertainty of future actions.

1 For example, in Docket No. 29684, the Commission specifically stated that future land
2 use development plans (post-notice construction) should not be a criterion for route
3 selection.² Commission Staff has often taken this position as well. As such, current
4 Commission rules do not require Joint Applicants or the Commission to consider future
5 development as a criterion for route selection.

6 Future land use development is a common concern expressed by landowners in
7 transmission line CCN cases, and assertions about impacts are often overstated.
8 Transmission lines can and do coexist with future residential and commercial
9 development, and several examples of transmission lines occurring with residential and
10 commercial development can be seen throughout the state, particularly in congested
11 metropolitan areas.

12 The existence of transmission lines in an area does not significantly impede
13 development, as exhibited by very successful master-planned developments like the
14 Woodlands Township north of Houston, as well as Barton Creek, Lost Creek, Steiner
15 Ranch, and the Domain in the Austin area. All of these developments have multiple
16 transmission lines and substations near and through them that were present prior to
17 development.

² *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Kendall and Bexar Counties*, Docket No. 29684, Order on Rehearing at 4 (Mar. 22, 2006).

1 Due to the congested nature of the study area along the Resaca de los Fresnos and near
2 the La Palma Station, it would be impossible to develop an adequate number of
3 geographically differentiated alternative routes if all currently vacant properties in this
4 study area with future land use development plans were avoided. Doing so would force
5 the Joint Applicants to develop alternative routes that would impact, and potentially
6 require condemnation of, existing development, residences, or other habitable
7 structures.

8 **Q. SEVERAL INTERVENORS ARE CONCERNED ABOUT THE PROJECT**
9 **DEVALUING THEIR PROPERTY. HOW DO YOU RESPOND?**

10 A. As I mentioned, the Commission does not consider property values as a routing
11 consideration. The Commission specifically stated in the Order of Referral and
12 Preliminary Order in this docket that the appropriate compensation for any ROW, which
13 is based on property values, or condemnation of property was not to be addressed.³

14 Property valuation is a subjective issue that is based on several factors that are shared
15 with determining ROW compensation. Several intervenors express this concern and I
16 do not believe the concern, for devaluing of property values provides a clear basis for
17 distinguishing between the routes.

³ Order of Referral and Preliminary Order at 6 (Jul. 11, 2022).

1 **Q. IS “NOT WANTING THE TRANSMISSION LINE ON YOUR LAND OR**
2 **VISIBLE FROM YOUR LAND” A ROUTING CRITERION?**

3 A. No, it is not. I understand that the intervenors generally do not want the transmission
4 line on or near their property. However, Joint Applicants must abide by the regulatory
5 and statutory criteria, and while sentiments such as those expressed by many of these
6 intervenors are certainly understandable, it would be impossible to route a transmission
7 line if Joint Applicants, the administrative law judges (“ALJs”), and the Commission
8 were guided by a criterion that focused on intervenors’ desire to have a necessary
9 transmission line placed on someone else’s property.

10 **Q. SEVERAL INTERVENORS SUPPORT ROUTES AND LINKS THAT**
11 **“RUN/USE” EXISTING TRANSMISSION LINES. DID POWER AND THE**
12 **JOINT APPLICANTS CONSIDER UTILIZING OR PARALLELING**
13 **EXISTING TRANSMISSION LINES?**

14 A. Yes, utilizing or paralleling existing transmission lines and other compatible ROW are
15 Commission routing criteria along with paralleling property lines or other natural or
16 cultural features. Each of these criteria were considered, as discussed in Sections 3.2.1
17 and 4.2.2 of the EA.

1 No available options were identified that allowed the use of existing transmission lines
2 or rights-of-way. The existing transmission lines in the area were not designed and
3 constructed to be capable of adding a new double-circuit 345-kV transmission line.
4 Also, the width of the existing transmission line easements will not accommodate the
5 construction of additional transmission lines. There are no existing transmission line
6 corridors in the area that can be utilized for the Project. Limited opportunities for
7 paralleling existing transmission lines were identified, and all of the routes parallel
8 existing transmission lines for some distance. In some instances, constraints located
9 adjacent to existing transmission lines, their locations, or the orientation of the existing
10 transmission lines in the study area precluded utilizing or paralleling for a considerable
11 distance.

12 **Q. DOES THE COMMISSION’S FACTOR REGARDING THE PARALLELING**
13 **OF PROPERTY LINES OR OTHER NATURAL OR CULTURAL FEATURES**
14 **OUTWEIGH ALL OTHER FACTORS IN CONSIDERING THE**
15 **DELINEATION AND EVALUATION OF ROUTES?**

16 A. No. Paralleling property lines does not outweigh all other factors the Commission must
17 consider. This factor must be considered in balance with many other factors such as
18 cost and environmental and engineering constraints. Commission Rule 25.101(b)(3)(B)
19 states, among other things, that a new transmission line “shall be routed to the extent
20 reasonable to moderate the impact on the affected community and landowners...” and
21 “whether the routes parallel property lines or other natural or cultural features...”

1 In its adoption of these rules,⁴ the Commission defined the term “reasonable” to mean
2 “rational, appropriate, and not extreme or excessive,” and adopted the concept “that
3 paralleling geographical or cultural features such as existing roadways, waterways,
4 edges of timber, or fence lines or other natural divisions of property could offer the same
5 diminished impact on large tracts of land as paralleling property lines.” To the extent
6 reasonable, POWER and the Joint Applicants delineated routes that parallel existing
7 compatible ROW and/or parallel apparent property lines or other natural or cultural
8 features as previously mentioned.

9 **Q. DID ANY INTERVENORS RAISE CONCERNS ABOUT JOINT APPLICANTS**
10 **HAVING ACCESS TO THEIR PROPERTY?**

11 A. Yes. Some intervenors raised a concern with Joint Applicants having access to their
12 property.

13 **Q. WILL JOINT APPLICANTS RESPECT THE AFFECTED LANDOWNERS’**
14 **PROPERTY AND ENDEAVOR TO MINIMIZE ACCESSING SUCH**
15 **PROPERTY AFTER THE PROJECT IS CONSTRUCTED?**

16 A. Absolutely. During the construction phase, Joint Applicants will endeavor to coordinate
17 with landowners to sustain their properties’ security measures and limit access to
18 properties with gates, fences, and designated access points. After the line is constructed,
19 Joint Applicants might require access to the property for emergency restoration,
20 inspection, operation, vegetation management, maintenance, and general repairs.

⁴ *Rulemaking Concerning Transmission Line Routing*, Project No. 24101, Order Adopting An Amendment to §25.101 As Approved at the September 19, 2001 Open Meeting at 5 (Sep. 26, 2001).

1 **Q. SOME INTERVENORS ASSERT THAT THE PROJECT “BISECTS” THEIR**
2 **PROPERTY. HOW DO YOU RESPOND?**

3 A. I disagree with the characterization of transmission line routes “bisecting” properties.
4 While the transmission line would certainly “cross” properties, I believe the word
5 “bisect” gives a false impression that properties crossed by the transmission line ROW
6 will be divided into two or more separate properties in a manner similar to Texas
7 Department of Transportation (“TxDOT”) highways or railroads. This is not the case
8 with transmission lines. Unlike TxDOT highway or railroad ROW, transmission line
9 ROW does not “divide” or “bisect” properties into additional separate properties. Parcel
10 lines and property boundaries are not typically changed or altered by transmission line
11 ROW. The ROW will not be fenced or otherwise separated from adjacent lands and
12 landowners retain ownership of the land intact within a transmission line ROW and can
13 continue to use the land for other purposes such as parking lots, roadways, recreation,
14 rangeland, and agriculture so long as permanent structures do not impede the safe
15 operation and maintenance of the transmission line. Only a small amount of land around
16 and under the transmission line structures will be lost to other uses.

17 **Q. DOES THE COMMISSION ALLOW FOR MINOR ROUTE DEVIATIONS TO**
18 **ALLEVIATE LANDOWNER CONCERNS AND FURTHER MINIMIZE LAND**
19 **USE IMPACTS?**

20 A. Yes, in fact the Commission typically orders utilities to implement minor deviations in
21 the approved route to minimize the disruptive effect of the approved transmission line
22 route. Minor route deviations may directly affect only those landowners who were sent
23 notice of the application and have agreed to the deviation.

IV. RESPONSES TO SPECIFIC INTERVENOR TESTIMONY

A. Response to Jose A. Quintanilla

1 **Q. JOSE A. QUINTANILLA ASSERTS THE PROPOSED LINE WOULD**
2 **INTERFERE WITH HIS FARMING OPERATION. HOW DO YOU**
3 **RESPOND?**

4 A. As can be seen on the intervenor map, none of the alternative links cross Mr.
5 Quintanilla's property. Therefore, there should not be any impacts to his farming
6 operation.

B. Response to Michael Fitzpatrick

7 **Q. MICHAEL FITZPATRICK ASSERTS THAT ROUTES 2, 3, 4, 7, 14, AND 17**
8 **CROSS "RESACA FRONT" PROPERTIES IN THE "RESACA FRONT"**
9 **SUBDIVISION.⁵ DOES MR. FITZPATRICK'S PROPERTIES FRONT THE**
10 **RESACA DE LOS FRESNOS?**

11 A. No. Mr. Fitzpatrick's properties crossed by the alternative routes are located
12 approximately 0.2 to 0.5 mile from the banks of the Resaca de los Fresnos.

13 **Q. MR. FITZPATRICK STATES THAT THERE ARE PLANS FOR FUTURE**
14 **DEVELOPMENT IN THE RESACA FRONT SUBDIVISION.⁶ WHAT IS THE**
15 **CURRENT LANDUSE OF HIS PROPERTIES THAT ARE CROSSED BY THE**
16 **ALTERNATIVE ROUTES?**

⁵ Direct Testimony of Michael Fitzpatrick at 2 (Aug. 16, 2022).

⁶ *Id.*

1 A. According to his testimony, aerial imagery, and field reconnaissance, Mr. Fitzpatrick's
2 properties crossed by the alternative routes are currently irrigated agricultural lands with
3 some areas that are wooded and have not been cleared or developed. There are currently
4 no habitable structures within 500 feet of the alternative routes on Mr. Fitzpatrick's
5 properties. As I have mentioned, the Commission does not typically consider future
6 land use development for route selection.

7 **Q. MR. FITZPATRICK ASSERTS THAT THE TRANSMISSION LINE WOULD**
8 **“SPLIT” ONE OF HIS LOTS IN TWO AND “CREATE” TWO “USELESS”**
9 **PIECES OF LAND. DO YOU AGREE?**

10 A. No. As I previously discussed, transmission line ROW does not typically alter property
11 boundaries and does not “split” or “create” land. Furthermore, transmission line ROW
12 does not render properties “useless.” Although landowners would not be able to place
13 structures within the ROW that would inhibit safe operation of the line, landowners
14 retain ownership of the land within a transmission line ROW and can continue to use
15 the land for agricultural and other purposes after construction. Only a small amount of
16 land around and under the transmission structures are lost to cultivation or other uses.

C. Response to Blanca Chapa and Flores, et al.
(Zobeyda Morales, Martha Reyna, Sonia Flores, and Maria Teresa Guerra)

1 **Q. WHAT IS YOUR RESPONSE TO THE CONCERNS OF BLANCA CHAPA AND**
2 **FLORES, ET AL.?**

3 A. The concerns expressed by each of these intervenors are nearly identical and express
4 many of the same concerns I have addressed in general positions common to
5 intervenors' testimony, including health and safety and proximity to habitable
6 structures. The Chapa Property would be spanned by Link N2 for approximately 45
7 feet along the southwest corner of the property and would require a very minimal aerial
8 easement. The centerline of Link N1 does not cross the Sonia Flores, et al. property but
9 might require a minimal aerial easement.

D. Response to the Ogdees

10 **Q. THE OGDEES ASSERT THE TRANSMISSION LINE ROUTE PASSES**
11 **“DIRECTLY OVER” THEIR PROPERTY AND “DIRECTLY ABOVE” AN**
12 **OCCUPIED RESIDENCE.⁷ DO YOU AGREE?**

13 A. No. The transmission line centerline is routed across the adjacent Wal-Mart property
14 and does not pass “directly over” or “directly above” the Ogdee property or residence.
15 A minimal aerial easement would cross a small portion of the southeast corner of the
16 Ogdee property.

⁷ Direct Testimony of Ronald G. Ogdee, Fred T. Ogdee, and Phillip A. Ogdee at 1 (Aug. 19, 2022).

E. Response to the Direct Testimony of Brian C. Andrews
On Behalf of GOBAR Brothers, LLC

1 **Q. DID MR. ANDREWS AGREE WITH POWER AND THE JOINT APPLICANTS**
2 **THAT ROUTE 4 IS THE ROUTE THAT BEST ADDRESSES THE**
3 **REQUIREMENTS OF PURA AND COMMISSION RULES?**

4 A. No, Mr. Andrews states that Route 4 is in a group of very similar routes (Routes 2, 4,
5 and 5) that could all potentially be considered the route that best addresses the
6 requirements of PURA and the Commission's rules. Out of these routes, Route 5 is the
7 only route among this group that does not cross the GOBAR Brothers property.

8 **Q. DO YOU AGREE WITH MR. ANDREWS' OPINION THAT ROUTE 5 IS AN**
9 **ACCEPTABLE CHOICE FOR COMMISSION APPROVAL?**

10 A. Yes. Although I maintain my position that Route 4 is best, I agree with Mr. Andrews
11 that Route 5 is an acceptable choice for Commission approval. Route 5 was POWER's
12 third ranked route from an environmental and land use perspective and is the fourth least
13 expensive route. As mentioned in my direct testimony, all the routes included in the
14 application are viable, feasible, and acceptable from an environmental and land use
15 perspective and the Joint Applicants are willing to construct any of the alternative routes
16 filed in the CCN application.

1 **Q. MR. ANDREWS STATES THAT GREATER WEIGHT SHOULD BE PLACED**
2 **ON CERTAIN FACTORS VERSUS OTHERS, AND DISCUSSES**
3 **CONSIDERATION OF UNIQUE CIRCUMSTANCES.⁸ HOW DO YOU**
4 **RESPOND?**

5 A. With regard to preference or greater weight placed on certain factors, I have seen the
6 Commission place emphasis on certain criteria at different times for various reasons. I
7 have been involved in numerous transmission line dockets in Texas including several
8 of the dockets listed by Mr. Andrews while employed with PBS&J (formerly Espey
9 Huston and Associates Inc., now Atkins North America) and POWER. Over the years
10 I have witnessed the Commission go through changes in Commissioners and
11 Commission Staff members, with each of them providing different perspectives and
12 opinions on different matters.

13 With regard to unique circumstances, it is my experience that in general, no two projects
14 are identical, project study areas vary, each project has its own set of unique facts and
15 circumstances, and the relationship and relative sensitivity among environmental factors
16 often differ from project to project. As such, I believe all projects are unique in their
17 own way and have unique circumstances, including this one.

⁸ Direct Testimony of Brian C. Andrews at 8-11 (Aug. 19, 2022).

1 **Q. HOW DO YOU RESPOND TO MR. ANDREWS' SUGGESTED CRITERION**
2 **OF "NOT PARALLELING VARIOUS TYPES OF LINEAR FEATURES"?"⁹**

3 A. This is not a criterion included in PURA § 37.056(c)(4) or the Commission's rules.
4 These criteria do include consideration of whether the routes parallel existing
5 compatible ROW or whether they parallel property lines or other natural or cultural
6 features. These criteria have been included in every electric transmission line EA that
7 I have been involved with in Texas.

8 **Q. MR. ANDREWS CLAIMS "USING THE LENGTH OF A ROUTE**
9 **PARALLELING A PARTICULAR TYPE OF ROW OR THE PERCENTAGE**
10 **OF THE TOTAL LENGTH OF A ROUTE PARALLELING A PARTICULAR**
11 **TYPE OF ROW CAN BE MISLEADING BECAUSE THE ALTERNATIVE**
12 **ROUTES UNDER CONSIDERATION MAY HAVE SIGNIFICANTLY**
13 **DIFFERENT LENGTHS."**¹⁰ **DO YOU AGREE?**

14 A. No, I believe the opposite is true. As I stated previously, the Commission's rules include
15 consideration of whether the routes parallel existing compatible ROW or whether they
16 parallel property lines or other natural or cultural features. In my opinion, calculating
17 the percentage that each route parallels these features assists landowners, the ALJs, and
18 the Commission determine how much the routes parallel relative to their length. It is
19 easy enough to determine the length of a route that does not parallel an existing
20 compatible ROW by simply subtracting the length that it does parallel from its total
21 length.

⁹ *Id.* at 15-16.

¹⁰ *Id.*

1 **Q. WITH REGARD TO MR. GUTIERREZ’S “FUTURE” LAND USE PLANS,**
2 **WHAT IS THE CURRENT LAND USE OF THE GOBAR BROTHERS**
3 **PROPERTY THAT IS CROSSED BY THE ALTERNATIVE ROUTES?**

4 A. Mr. Gutierrez states that the land is vacant, and construction of the planned subdivision
5 has not yet commenced.¹² I would note, however, that Mr. Gutierrez also states that
6 there is one single-family residence that is vacant.¹³ It is densely brushed with some
7 clearing and an existing transmission line.

8 **Q. DOES MR. GUTIERREZ HAVE ANY OTHER ENVIRONMENTAL**
9 **CONCERNS THAT YOU HAVE NOT ALREADY ADDRESSED IN YOUR**
10 **RESPONSES TO GENERAL POSITIONS COMMON TO INTERVENOR**
11 **TESTIMONY?**

12 A. Yes. Mr. Gutierrez expresses concerns about wire strikes to waterfowl, vegetation
13 management and ROW restoration, Federal Aviation Administration notification and
14 lighting requirements, impact to communication facilities, and recommends an
15 environmental study be conducted. POWER has already conducted an Environmental
16 Assessment and Alternative Routing Analysis (i.e., the EA) that specifically addresses
17 these issues and was included as Attachment 1 to the CCN application. There is no need
18 or requirement for another environmental study.

¹² *Id.* at 8.

¹³ *Id.* at 7.

V. RESPONSE TO COMMISSION STAFF

**Q. WHAT IS YOUR RESPONSE TO THE DIRECT TESTIMONY OF
COMMISSION STAFF’S WITNESS SHERRYHAN GHANEM?**

A. Ms. Ghanem supports Route 4, which is the same route that Joint Applicants identified as the route they believe best addresses the requirements in PURA and the Commission’s rules. Joint Applicants are willing to construct any of the alternative routes filed in the CCN application if the Commission were to select a route other than Route 4.

VI. CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. I have not found anything in any of the intervenors’ direct testimony that would preclude construction of the Project along any of the proposed alternative routes. All of the alternative routes are viable and acceptable routes, and as mentioned throughout this testimony, Joint Applicants are willing to construct any of the alternative routes filed in the CCN application if the Commission were to select a route other than Route 4.

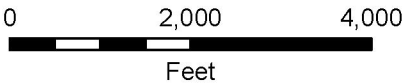
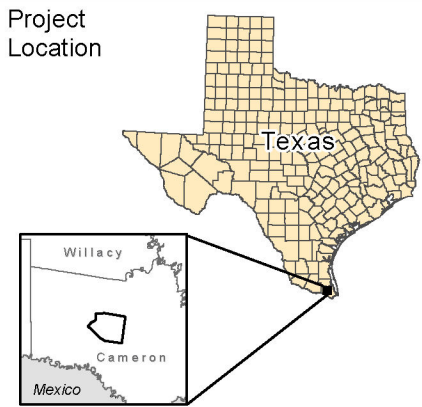
Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

SOAH Docket No. 473-22-05831
PUC Docket No. 53727
La Palma - Kingfisher 345-kV
Transmission Line Project
Cameron County, Texas

Intervenor Map

- Primary Link Node
- Primary Link
- Station Property Boundary
- Intervenor & ID
- Interstate Highway
- US Highway
- State Highway
- FM Road
- County/Local Road
- Railroad



An AEP Company

Date: 8/22/2022

ID	Intervenor
1	PALO VERDE/LAS RETAMAS N.A. ¹
2	GOBAR BROTHERS
4	JOSE QUINTANILLA
7	MICHAEL FITZPATRICK
8	DAVID FLOODMAN-U R HOME TEXAS
10	WILSON B. FRY
16	BLANCA & LUIS CHAPA
18	PHILIP, FRED, & RONALD OGDEE
20	SONIA FLORES, ET AL ²
26	ERNESTO ESTRADA
27	MANUEL & EVELLA DURAN, JR.

¹The Palo Verde/Las Retamas Neighbors Association includes the following landowners: Bill and Merrilee Eliff; Bobby and Robin Farris; Daniel and Luisa Albo; Javier and Jackie Cabello; Bill and Cindy Rountree; Jose and Mary Perez; Ken and Jan Cornett; Geoff and Connie Drake; Amadeo and Dolores Valenzuela; Green Jay Estates, LLC (Jorge Talamas); Lonnie and Judy Stanton; Usman and Ishath Sheriff; Don and Jane Barry; and Joseph H. Ballenger.

² Sonia Flores, et al includes the following intervenors: Sonia Flores, Martha Reyna, Raul Pina, Zobeyda Morales, Yolanda Guillen, and Teresa Pina (aka Maria Teresa Guerra).

ROUTE	LINK COMPOSITION
1	B1-AO-E2-O-Q
2	B1-B2-E1-E2-O-Q
3	B1-B2-E1-E2-O-P-AN
4	A-C-E1-E2-O-Q
5	A-D-G-I-N1-N2-O-Q
6	A-D-G-J-S1-L-AP-N2-O-Q
7	B1-B2-F-G-J-S1-L-AP-N2-O-Q
8	A-D-H-R-U-W-X-Y-AE1A-AE1B-AE2-AK-AL-AN
9	A-D-H-R-U-W-X-AA-AD1-AD2-AE1A-AE1B-AE2-AK-AM
10	A-D-H-R-V-AB-AC-AD1-AQ-AE1B-AE2-AK-AL-AN
11	A-D-G-J-S1-L-T-Z-AC-AD1-AQ-AE1B-AE2-AK-AL-AN
12	A-D-H-K-S1-S2-W-X-AA-AD1-AQ-AE1B-AE2-AK-AM
13	A-C-F-H-R-V-AF-AH-AJ-AK-AL-AN
14	B1-B2-F-H-R-V-AB-AC-AG-AH-AJ-AK-AM
15	A-D-G-J-S1-L-T-Z-AC-AG-AH-AJ-AK-AM
16	A-D-G-I-M-T-Z-AC-AG-AH-AJ-AK-AL-AN
17	B1-B2-F-G-J-S1-L-T-Z-AC-AG-AH-AJ-AK-AM
18	A-D-G-I-M-T-X-AA-AG-AH-AI-AE2-AK-AL-AN
19	A-D-H-K-S1-L-AP-N2-O-Q