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APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE RAMHORN HILL-DUNHAM 345 KV TRANSMISSION LINE IN DENTON AND WISE COUNTIES	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**ONCOR ELECTRIC DELIVERY COMPANY LLC'S
RESPONSE TO DEBORAH N. DALLAS'S ROUTE ADEQUACY STATEMENT**

I. INTRODUCTION

Oncor Electric Delivery Company LLC ("Oncor") files this response to intervenor Deborah N. Dallas's ("Movant's") *Intervening Statement and Evidence, Challenge of Route Adequacy and Hearing Request* ("Route Adequacy Statement"). While the Route Adequacy Statement uses the words "Challenge of Route Adequacy" in its title, it does not challenge the adequacy of Oncor's routes. Instead, it states Movant's position on the proposed transmission line, arguing for certain routes and against others. Accordingly, Oncor respectfully requests that the State Office of Administrative Hearings ("SOAH") Administrative Law Judge ("ALJ"): (1) deny Movant's Route Adequacy Statement, and (2) find that no route adequacy hearing is necessary because no party raised a valid route adequacy challenge.

II. PROCEDURAL BACKGROUND

On June 8, 2023, Oncor filed an application (the "Application") to amend its certificate of convenience and necessity ("CCN") for the Ramhorn Hill-to-Dunham 345 kV transmission line project in Denton and Wise counties (the "Project"). The Application includes 74 geographically diverse routes, comprising 140 distinct alternative route links.¹ The 140 filed links can be combined in hundreds of thousands of possible permutations to create additional routes connecting the Project's endpoints.²

¹ Direct Testimony of Brenda J. Perkins at 32 (Ex. BJP-5 at 2) (Jun. 8, 2023) ("Perkins Direct").

² See CCN Application, Attachment I (Environmental Assessment and Alternative Route Analysis) at 6-7 (Jun. 8, 2023) ("Environmental Assessment"). Oncor provided environmental and routing data for 221 routes in Table 7-2 (Appendix E) of the Environmental Assessment and selected 74 of those routes to be filed with the Application, but all filed links and any route using those links are available for the Commission's selection.

On June 9, 2023, the Public Utility Commission of Texas (“Commission”) issued an Order of Referral and Preliminary Order (“Order of Referral”) that provides a list of issues to be addressed by SOAH in this matter.³ One such issue is whether “the application contain[s] an adequate number of reasonably differentiated routes to conduct a proper evaluation[.]”⁴ The Order of Referral also requires SOAH to consider any permits or permissions that must be obtained from federal agencies to construct and operate the Project.⁵

On June 28, 2023, the SOAH ALJ issued SOAH Order No. 2. Among other things, this order adopts a procedural schedule establishing July 31, 2023, as the deadline to challenge route adequacy and request a route adequacy hearing. On July 10, 2023, Movant filed a request to intervene as a directly affected landowner and trustee of the Deborah N. Dallas Revocable Living Trust. On July 31, 2023, Movant filed the Route Adequacy Statement, which purports to challenge the adequacy of Oncor’s filed routes. No other party challenged route adequacy.⁶

Oncor timely files this response to Movant’s Route Adequacy Statement,⁷ and respectfully requests that the ALJ: (1) deny the Route Adequacy Statement, and (2) find that no route adequacy hearing is necessary, because Movant did not state a valid route adequacy claim.

III. SCOPE OF ROUTE ADEQUACY INQUIRY

The Order of Referral presents the route adequacy issue as follows:

Is the applicant’s application to amend its CCN adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation? In answering this question, consideration must be given to the number of proposed alternatives, the locations of the proposed transmission line, and any associated proposed facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under consideration and to any analysis and reasoned justification presented for a limited number of alternative routes. A limited number of alternative routes is not in itself a sufficient basis for finding an application inadequate when the facts and circumstances or a reasoned justification demonstrates

³ Order of Referral at 5 (Jun. 9, 2023).

⁴ *Id.*

⁵ *Id.* at 9-10; *see also* Tex. Gov’t Code § 2003.049(e) (requiring the Commission to provide the ALJ a list of issues to be addressed in any proceeding referred to SOAH).

⁶ In Testimony of David Rettig for Town of Northlake at 14:327-15:340 (Jul. 31, 2023), the Town of Northlake initially challenged the geographic diversity of Oncor’s routes. Northlake later retracted this challenge and deleted this portion of the testimony. *See* Town of Northlake Redaction of Testimony of David Rettig (Aug. 3, 2023).

⁷ Although no deadline for responding to route adequacy challenges is included in the procedural schedule adopted in SOAH Order No. 2, at the Prehearing Conference, the parties agreed that responses would be due on August 4, 2023.

a reasonable basis for presenting a limited number of alternatives. If an adequate number of routes is not presented in the application, the ALJ must allow the applicant to amend the application and to provide proper notice to affected landowners; however, if the applicant chooses not to amend the application, the ALJ may dismiss the case without prejudice.⁸

The basic intent of a route adequacy hearing is “to ensure the adequacy of the application, not the adequacy of the proposed routes.”⁹ Therefore, the potential impacts of specific routes or links on a given landowner and relative comparisons of route attributes are not appropriate issues to be considered at a route adequacy hearing, and should instead be reserved for the hearing on the merits.¹⁰ Accordingly, the issue of route adequacy distills to this:

Does Oncor’s application present an adequate number of reasonably differentiated routes to conduct a proper evaluation, taking into consideration the circumstances specific to this geographic area and the analysis and reasoned justification supplied in Oncor’s direct case?

IV. BURDEN OF PROOF

In a route adequacy hearing, the applicant bears the burden of proof to show that its application is adequate.¹¹ However, this burden only requires the applicant to show that it has proposed an adequate number of reasonably differentiated routes for the ALJ and the Commission to conduct a proper evaluation.¹² An applicant may make this *prima facie* showing through its application and the routes contained in the application.¹³ An applicant is not required to disprove

⁸ Order of Referral at 5.

⁹ See *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8, at 5 (Nov. 1, 2006) (“[T]he various criteria in PURA § 37.056 and P.U.C. SUBST. R. 25.101 relating to the broader issues of route adequacy...should be considered at the hearing on the merits”).

¹⁰ See *id.*

¹¹ *Id.* at 6.

¹² See *Application of LCRA Transmission Services Corporations to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, SOAH Order No. 10 at 11 (Jul. 30, 2007); *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Johnson and Hood Counties, Texas*, Docket No. 33800, SOAH Order No. 13 at 3 (July 20, 2007) (“The ultimate burden of proof rested and remains on Brazos: Brazos must show that its application contains an adequate number of alternative routes for the ALJ and the Commission to conduct a proper evaluation.”).

¹³ See *Application of Brazos Electric Power Cooperative, Inc., to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line and Substation in Collin, County, Texas*, Docket No. 34276, SOAH Order No. 14 at 1 (Nov. 28, 2007).

the viability of every conceivable routing permutation developed by other parties.¹⁴ Drawbacks and unanswered questions associated with a route developed by another party are adequate reasons for rejecting the route.¹⁵

[T]he purpose of a preliminary route-adequacy hearing is to perform a more cursory review of the application to determine whether the application contains an adequate justification for the routes selected and whether additional routes should be added to the application at an early stage in the contested case process...an applicant should provide a 'reasoned justification' for the limited number of routes offered in an application. This is a much lower standard than the applicant's general burden to prove by a preponderance of the evidence that its application complies with all statutes and regulations. In short, the preliminary route-adequacy review is not intended to provide a complete review of the evidence related to these issues. Rather, it is to determine whether the application contains enough information to proceed on the routes chosen by applicant.¹⁶

Once an applicant makes a *prima facie* showing of the adequacy of its application, the burden shifts to the other parties to present evidence showing the inadequacy of the application or of the routes presented.¹⁷ The applicant can then rebut this evidence by offering a reasoned justification as to why the proposed route should not be included.¹⁸ Given that there are an infinite

¹⁴ See Docket No. 33844, SOAH Order No. 10 at 11 ("Having placed a reasonable number of reasonably differentiated routes on the table, LCRA TSC was not obligated to disprove the viability of every conceivable routing permutation developed by the other parties"); Docket No. 33800, Order No. 13 at 3 ("At the preliminary hearing, Brazos was not required to put on initial direct testimony to argue against routes that other landowners thought should be included").

¹⁵ See Docket No. 33844, SOAH Order No. 10 at 11.

¹⁶ See Docket No. 34276, SOAH Order No. 22 at 9 (Feb. 19, 2008).

¹⁷ See Docket No. 34276, SOAH Order No. 14 at 1 (Nov. 28, 2007) ("[O]nce Brazos Electric makes a *prima facie* showing, the responsibility is on the other parties to present some evidence showing the inadequacy of the application or the routes presented, or to present additional routes to be considered....once Brazos Electric makes a *prima facie* showing, it is incumbent on the other parties to present evidence on these issues."); Docket No. 33800, SOAH Order No. 10 at 1, 3 (June 28, 2007) (noting since applicant established its *prima facie* case regarding the adequacy of the application, "the burden to produce some evidence regarding the inadequacy of the Application shifted to the intervenors...the Movants bear a burden of production of facts to support their claims, whether by direct examination of their own witnesses or cross-examination of Brazos' witnesses").

¹⁸ See Docket No. 33800, SOAH Order No. 13 at 3 (July 23, 2007) (noting once Brazos made its *prima facie* case, the burden shifted to the intervenors "to propose new alternatives, which Brazos could then address"); see also Docket No. 33844, SOAH Order No. 10 at 3 (Jul. 30, 2007) ("the demonstrated existence of a readily identifiable and likely superior option to an applicant's array of alternatives [can] persuade the ALJ to require inclusion of that option ... *unless* the Applicant can demonstrate that the route has been assessed and rejected for appropriate reasons") (emphasis added); Docket No. 33844, Order on Appeal of Order No. 10 at 2-3 (Oct. 9 2007) (denying the appeal of SOAH Order No. 10 and noting that the route proposed by the intervenor need not be added to those included in the original application); *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, SOAH Order No. 10 at 4-8 (Dec. 1, 2004) (discussing burden of proof and standard of proof for route adequacy, noting "burden of production shifted back to Applicant to rebut [intervenor] evidence" that application was inadequate for failure to include route).

number of potential routes in any given study area, there must be an end to the process. “At some point, a line must be drawn between having significant and real choices for the Commission to consider on the one hand, and requiring a never ending potential for alternative routes to be considered on the other.”¹⁹

V. MOVANT’S ROUTE ADEQUACY STATEMENT

The Route Adequacy Statement raises two complaints regarding Oncor’s routes. First, Movant asserts that Commission approval of Route 146 or links C1 or C5 will render her home “nearly uninhabitable.” As such, she asks the Commission to deny: (1) Route 146; (2) links C1, C5, C8, C21, C22, C23; and (3) all links adjacent to or connecting to those links. Second, Movant argues for a specific route across property owned by the United States Army Corps of Engineers (“USACE”), beginning south of the Trailwood Subdivision, which route Oncor did not include in the Application. Movant asks the Commission to “deny alternate routes north of [Farm-to-Market Road] 1171” and approve “the USACE alternative route South of the Trailwood Development and then along the southern border of FM 1171[.]” Movant does not provide a map or additional description of the desired route.

VI. ONCOR’S APPLICATION IS ADEQUATE

A. Oncor Made a Prima Facie Showing that Its Routes Are Adequate

Neither of Movant’s complaints challenge the adequacy of Oncor’s routing. Oncor’s Application provides significant and real routing choices for the Commission to consider, and the information it provides is more than sufficient to proceed on the routes Oncor chose. The Application includes 74 geographically diverse routes made up of 140 alternative routing links.²⁰ These routes offer hundreds of thousands of potential pathways to connect the project’s endpoints, covering a geographic area that spans almost 15 miles east-to-west and 5 miles north-to-south.²¹ Oncor will build the Project using any combination of those 140 links, even if the selected route is not one that was filed with the Application. Thus, Oncor made a *prima facie* showing that the Application provides an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.

¹⁹ *Application of Oncor Electric Delivery Company to Amend a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission line within Bell and Williamson Counties, Texas*, SOAH Order No. 12 (Dec. 6, 2007) adopted in relevant part, Order on Appeal of Order No. 12 (Jan. 16, 2008).

²⁰ Perkins Direct at 32 (Ex. BJP-5 at 2).

²¹ Environmental Assessment at 6-7; see also Environmental Assessment, Figure 6-1.

B. No Party Raised a Substantive Challenge to the Adequacy of Oncor's Routes

Although styled as a “Challenge of Route Adequacy,” Movant’s pleading does not challenge the adequacy of Oncor’s routing. Instead, it provides Movant’s statement of position, primarily arguing against approval of specific links based on their potential impacts to the Movant. Commission precedent makes clear that the focus of a route adequacy challenge should be on the number of differentiated routes, not on the merits of any single route. The pervasive residential, commercial, and industrial development in this study area ensures that any route connecting the Project’s endpoints will necessarily be in proximity to local residences and businesses, which naturally limits the available routing options. While these issues are relevant to the ultimate selection of a route on its merits, they cannot form the basis of a route adequacy challenge.

Movant also urges the Commission to simply order Oncor to build the route across USACE property. But the USACE is a federal agency that cannot be compelled by an order from the Commission. Any route that crosses USACE property must receive approval from the federal government. Therefore, even if the Commission ordered Oncor to construct the Project using the route Movant desires, that order would be ineffectual without express approval from the USACE, which Oncor does not have. The absence of USACE approval renders Movant’s route not constructible. Commission precedent demonstrates that this is adequate justification for Oncor’s decision to reject the route.

C. Oncor Provided Analysis and a Reasoned Justification for Its Routing Decisions

This is not the first time intervenors in a CCN case urged approval of a route across USACE property. In 2007, the Commission approved construction of a Brazos Electric Power Cooperative, Inc. (“Brazos”) transmission line across land owned by the USACE.²² After the Commission issued its order in that docket, the USACE denied Brazos the right to cross the property, stating that Brazos had viable routing options off of federally owned land.²³ This rendered the approved project not constructible, compelling Brazos to file a second CCN application to obtain an alternate route for the section of the line that would have crossed USACE property.²⁴ All of the northern

²² *Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Denton County, Texas*, Docket No. 32871, Final Order, Finding of Fact 20 (Nov. 8, 2007).

²³ *Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a 138-kV Double Circuit Transmission Line in Denton County*, Docket No. 37616, Application at 6 (Nov. 19, 2009).

²⁴ *Id.*

endpoints Brazos proposed in its second application originated at a point on the previously approved route that lay just outside the USACE property.²⁵ The Commission denied this application, concluding it did not contain an adequate number of reasonably differentiated routes because the northern endpoints unduly limited the Commission's routing selection.²⁶ Finally, in 2016, ten years after filing its initial application for the project, Brazos filed a third, and fully revised, CCN application and received Commission approval for a constructible route that did not cross the USACE property.²⁷

That ordeal illustrates the time and resources that can be wasted by applicants filing routes they cannot construct. Since then, Oncor and the Commission have routinely factored these issues into their routing decisions. The Order of Referral now requires SOAH to consider the federal permissions required for construction and operation of the proposed transmission facilities, and the applicant's status in obtaining those permissions.²⁸ And when parties challenged Oncor's route adequacy on the Krum West-to-Anna 345 kV transmission line project because the application included only a single routing option through a USACE-owned recreational area, the ALJ deemed Oncor's application sufficient based on Oncor's showing that the USACE was unwilling to consider other alternatives.²⁹ More recently, landowners challenged route adequacy based on CPS Energy's decision not to include a preliminary alternative route segment in the application that crossed a conservation easement funded by the United States Army.³⁰ The ALJs denied this challenge after CPS Energy produced communications from Army officials refusing to grant permission to route across the property.³¹

At a field visit on February 14, 2023, the USACE specifically evaluated the Ramhorn Hill-to-Dunham transmission line crossing that Movant appears to support, which would enter the

²⁵ *Id.* at Attachment 1 (Environmental Assessment), Figure 1-2.

²⁶ Docket No. 37616, Final Order at 1 (Jan. 21, 2011).

²⁷ *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Double Circuit Transmission Line in Collin and Denton Counties*, Docket No. 43878, Final Order (Mar. 30, 2016).

²⁸ See Order of Referral at 9-10; see also Tex. Gov't Code § 2003.049(e).

²⁹ *Application of Oncor Electric Delivery Company, LLC to Amend a Certificate of Convenience and Necessity for the Krum West to Anna 345-kV CREZ Transmission Line in Collin, Cooke, Denton, and Grayson Counties*, Docket No. 38597, SOAH Order No. 3 (Oct. 5, 2010).

³⁰ *Application of the City of San Antonio, Acting By and Through the City Public Service Board (CPS Energy) to Amend Its Certificate of Convenience and Necessity for the Scenic Loop 138-kV Transmission Line in Bexar County*, Docket No. 51023, Joint Motion Challenging Route Adequacy and Request for Route Adequacy Hearing at 3 (Nov. 24, 2020).

³¹ Docket No. 51023, SOAH Order No. 5 (Dec. 11, 2020).

USACE property south of the Trailwood subdivision. Representatives from Oncor, the USACE, municipalities, and state and federal legislative offices were all in attendance for this meeting. The USACE representatives concluded that aerial crossings in this area are not viable outside of the designated utility corridors. More specifically, as explained in Oncor's Environmental Assessment, "[t]he option reviewed in the USACE field visit south of Trailwood was specifically discussed as an option the USACE did not believe it could support or approve."³²

In light of Brazos's experience with its planned USACE crossing and the Commission's requirement that SOAH consider the federal permissions required for a USACE crossing on this Project, Oncor heeded this clear guidance from the USACE when deciding whether to propose routes across USACE property. Oncor also produced substantial analysis in this docket supporting the reasoned justifications underlying its routing decisions, including the decision not to cross USACE property at this and other locations. This includes 42 pages of communications regarding a potential USACE crossing;³³ 38 pages of analysis of the routing, engineering, and planning constraints associated with specific crossings of the USACE property;³⁴ multiple pieces of direct testimony and exhibits explaining in detail why Oncor ultimately deemed these crossings infeasible;³⁵ and many additional pages of material explaining why the pervasive and ongoing development in the study area limits the available routing options.³⁶ Oncor's analysis shows that, even if Oncor received federal permission to route across the USACE property, the dense commercial and industrial development southwest of the USACE property would still render these routes infeasible.³⁷

D. No Route Adequacy Hearing is Needed

Under the applicable standards, as demonstrated by Oncor's Application and the testimony of its expert witnesses, Oncor's Application is sufficient because it contains an adequate number of reasonably differentiated alternative routes for the ALJs and the Commission to conduct a proper evaluation. The hundreds of thousands of possible routing permutations that can be created

³² Environmental Assessment at A-240 (Appendix A).

³³ See Environmental Assessment at 5-22 and A-202-244 (Appendix A).

³⁴ Environmental Assessment at Appendix G.

³⁵ See Direct Testimony of Russell J. Marusak at 8-10, 14-22, 41-62 (Exs. RJM-4-6) (Jun. 8, 2023) ("Marusak Direct"); Direct Testimony of Amy L. Zapletal at 11-19, 25-50 (Exs. ALZ-2-4) (Jun. 8, 2023) ("Zapletal Direct"); Direct Testimony of Harsh Naik at 15-18 (Jun. 8, 2023) ("Naik Direct").

³⁶ Environmental Assessment at 5-2 - 5-21; Marusak Direct at 7-10, 12-14; Perkins Direct at 8-10, 12, 31-46 (Exs. BJP-5-6) Naik Direct at 4, 15-17.

³⁷ Zapletal Direct at 11-19, 25-50 (Exs. ALZ-2-4).

using the 140 alternative routing links filed in the Application satisfy Oncor's burden of production to show that its Application is adequate. And Oncor's reasoned decision not to include routes in the Application for which it could not obtain necessary federal approvals does not diminish the adequacy of Oncor's filed routes

Movant's Route Adequacy Statement addresses the merits of specific links, not the adequacy of Oncor's routing. While no party, including Movant, raised a valid challenge to route adequacy, Oncor nonetheless provided substantial analysis and reasoned justification to support its routing decisions, including the need to route through existing development in the study area where it could, which limited the available routing opportunities, and the decision not to propose routes across USACE property. Based on the facts and circumstances present in the study area, Oncor's filed routes are more than adequate for the ALJ and the Commission to conduct a proper evaluation. Thus, no route adequacy hearing is needed.

VII. CONCLUSION

Oncor respectfully requests that the ALJ (1) deny Movant's Route Adequacy Statement, and (2) find that no route adequacy hearing is necessary because no party raised a valid challenge to the adequacy of Oncor's routes.

Respectfully submitted,

By: /s/ Jared M. Jones

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**ATTORNEYS FOR ONCOR ELECTRIC
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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to SOAH Order No. 2 filed in this docket, a copy of the foregoing has been served on all parties via the PUC Interchange and on all parties from whom an action is required via email, on this the 4th day of August, 2023.

/s/ Michele M. Gibson