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**SOAH DOCKET NO. 473-23-21216
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APPLICATION OF ONCOR ELECTRIC DELIVERY 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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COMMISSION STAFF'S INITIAL BRIEF

Dated: September 7, 2023

Respectfully submitted,

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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION AND SUMMARY

The applicant, Oncor Electric Delivery, LLC (Oncor), seeks to amend its certificate of convenience and necessity (CCN) to construct and operate a 345-kilovolt (kV) transmission line (Proposed Project) in Denton and Wise Counties. The Proposed Project would begin at the proposed Oncor Ramhorn Hill Switch, to be located approximately 2 miles south of the intersection of United States Highway (US) 287 and State Highway 114 near Rhome, Texas in Wise County, Texas.¹ The Proposed Project will extend 20 to 23 miles, depending on the route, in an easterly direction terminating at the proposed Oncor Dunham Switch that will be located approximately 1.4 miles southeast of the intersection of US 377 and Farm-to-Market 1171 in Flower Mound, Texas in Denton County, Texas..²

The Staff (Staff) of the Public Utility Commission of Texas (Commission) supports the routing of the Proposed Project along what is designated as Route 179-C in the application.³ As discussed below, Route 179-C best meets the criteria in PURA⁴ § 37.056 and 16 Texas Administrative Code (TAC) § 25.101 when compared to all the proposed routes.

Staff’s witness, John Poole, recommended Route 179-C as the route that best meets PURA and the Commission’s criteria.⁵ Oncor identified Route 179 as the route that best meets PURA and

¹ Direct Testimony of John Poole, Staff Ex. No. 2 at 21:10-13 (Aug. 28, 2023). (Staff Exhibit No. 2).

² *Id.* at 5:9-13.

³ *Id.* at 25:1-4 and 52:9-53:5.

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (PURA).

⁵ Staff Ex. No. 2 at 52:9-53:5.

the Commission's criteria.⁶ While Staff notes that Texas Parks and Wildlife (TPWD) recommended Route 137 for the reasons set forth in their July 20, 2023 filing, which are discussed in this pleading, TPWD's recommendation does not change Staff's ultimate recommendation.⁷

A total of 85 routes were originally proposed by Oncor and were included in the notice of the application.⁸ It is Staff's position that, based on the route alternatives, Route 179-C adequately balances the desire to select a route exhibiting reasonable quantitative criteria, while also exhibiting qualitative features consistent with the community values expressed by parties and residents.⁹

PURA and the Commission's substantive rules list the requirements for approving an application for a CCN and for approving a route for a proposed transmission line, stating that "To approve an application to obtain or amend a CCN, the [Commission] must find that the proposed CCN is 'necessary for the service, accommodation, convenience, or safety of the public.'"¹⁰ In addition, the plain language of the Commission's 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 section 37.056—in addition to use of existing rights-of-way in determining the most reasonable route for a transmission line."¹¹ On 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"¹² and "no one factor controls or is dispositive."¹³

A. Route 179-C exhibits positive quantitative features

⁶ *Id.* at 20:21-22.

⁷ *Id.* at 38:5-7; TPWD's Comments regarding the Application of Oncor Electric Delivery Company, LLC for a Certificate of Convenience and Necessity for the Proposed Ramhorn Hill Switch – Dunham Switch 345-kilovolt Transmission line Project in Denton and Wise Counties at 5 (Jul. 20, 2023). (TPWD Comments).

⁸ See Application of Oncor Electric Delivery LLC to Amend its Certificate of Convenience and Necessity for the Ramhorn Hill- Dunham 345-kV Transmission Line in Denton and Wise Counties at Attachment 12b (Jun. 8, 2023). (Oncor Ex. No. 1).

⁹ Staff Ex. No. 2 at 52:9-53:5.

¹⁰ *Dunn v. Pub. Util. Comm'n of Tex.*, 246 S.W.3d 788, 791 (Tex. App.—Austin 2008, no pet.) (quoting PURA § 37.056(a)).

¹¹ *Id.* at 795.

¹² *Pub. Util. Comm'n of Tex. V. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985).

¹³ *Dunn*, 246 S.W.3d at 795.

Staff supports Route 179-C, because it exhibits positive quantitative features. While these quantitative features are discussed in greater detail in Section V.G (Preliminary Order Issue No. 8: Routing) below, the quantitative criteria that most favor Route 179-C are the following:

- Route 179-C is the 22nd least expensive proposed route at \$251,143,000.00, a \$7,485,000.00 or 3.27% difference from the least expensive route;¹⁴
- Route 179-C is the 29th shortest route at 110,373 feet, a 5,249 or 5% difference from the shortest route;¹⁵
- Route 179-C has one of the lower number of habitable structures within 500 feet of the centerline of the proposed routes with 98, five more than the route with the least number of habitable structures;¹⁶
- Route 179-C has none of its length across parks or recreation areas;¹⁷ and
- Route 179-C has none of its length across potential wetlands.¹⁸

B. Route 179-C exhibits positive qualitative features

Staff supports Route 179-C, because it performs well with regard to “community values”—a broadly construed term that “is properly interpreted as a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community.”¹⁹ Moreover, “community values may include landowner concerns and opposition.”²⁰

Staff’s witness, Mr. Poole, considered the feedback provided by landowners at the public meeting held by Oncor.²¹ Mr. Poole also considered impacts to recreational and park areas, historical values, aesthetic values, environmental integrity, engineering constraints, costs, and

¹⁴ Staff Ex. No. 2 at 52:15-17.

¹⁵ *Id.* at 52:18-19.

¹⁶ *Id.* at 52:20-22.

¹⁷ *Id.* at 52:23.

¹⁸ *Id.* at 53:1.

¹⁹ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, Final Order, Finding of Fact No. 65 (Mar. 4, 2008).

²⁰ *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, Texas*, Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010).

²¹ See Staff Ex. No. 2 at 25:12-31:1.

moderation of impact on the affected community and landowners.²² Consideration of these factors supports the selection of Route 179-C.

II. IDENTIFICATION OF UNCONTESTED ISSUES AND UNDISPUTED FACTS

No party contested the need for the Project. However, there was no identification of uncontested issues nor undisputed facts.

III. PROCEDURAL HISTORY

On June 8, 2023, Oncor filed an application for its Proposed Project in Denton and Wise Counties.²³ On June 9, 2023, the Commission filed an Order of Referral and Preliminary Order to transfer the proceeding to the State Office of Administrative Hearings (SOAH) and identify the issues that must be addressed.²⁴ On June 28, 2023, the SOAH administrative law judge (ALJ) found the application sufficient for further review on the merits.²⁵ From August 28 to August 30, 2023, a hearing on the merits was convened and concluded by SOAH.

IV. JURISDICTION

The Commission has jurisdiction over this matter under PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, 37.056, and 16 TAC § 25.101. SOAH has jurisdiction over this proceeding under Tex. Gov't Code § 2003.049 and PURA § 14.053.

V. PRELIMINARY ORDER ISSUES

A. Preliminary Order Issue No. 1: Adequacy of Application and Number of Routes

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 transmission facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under

²² *See id.* at 31:3-52:2.

²³ Oncor Ex. No. 1.

²⁴ Order of Referral and Preliminary Order (Jun. 9, 2023).

²⁵ SOAH Order No. 2 Memorializing Prehearing Conference; Finding Notice and Application Sufficient; Adopting Procedural Schedule; Setting hearing on the Merits (Jun. 28, 2023).

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 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, then the ALJ may dismiss the case without prejudice.

As previously discussed, a total of 85 routes were proposed by Oncor and were included in the notice of the application.²⁶ It is Staff's position that Oncor has presented an adequate number of reasonably differentiated alternative routes in its application.²⁷

B. Preliminary Order Issue No. 2: Notice of Application

Did the applicant provide notice of the application in accordance with 16 TAC § 22.52(a)(1), (2), and (3)?

Oncor provided proper notice of the application in compliance with PURA § 37.054 and 16 TAC § 22.52(a). In SOAH Order No. 2, the SOAH ALJ found notice to be sufficient.²⁸

C. Preliminary Order Issue No. 3: Notice of Public Meeting

Did the applicant provide notice of the public meeting in accordance with 16 TAC § 22.52(a)(4)?

Oncor provided notice and held two in-person public participation meetings, as required by 16 TAC § 22.52.²⁹ Oncor sent notice of the meetings to landowners owning property within 520 feet of each of the preliminary route centerlines.³⁰ Notice of the public meetings was also provided to the Department of Defense Siting Clearinghouse, as required by 16 TAC § 22.54(a)(4).³¹ Oncor also publicized the meetings through a public notice published in the

²⁶ Oncor Ex. No's. 6, 7, and 8.

²⁷ Staff Ex. 2 at 16:18-19.

²⁸ SOAH Order No. 2.

²⁹ Staff Ex. 2 at 25:14-26:2.

³⁰ *Id.* at 25:16-18.

³¹ Oncor Ex. No. 6.

Denton Record Chronicle and the *Wise County Messenger*.³² A total of 172 individuals attended the in-person public meetings.³³ Individuals attending the meetings were provided a questionnaire to complete.³⁴

D. Preliminary Order Issue No. 4: Public Input

What were the principal concerns expressed in the questionnaire responses received at or after any public meetings held by the applicant regarding the proposed transmission facilities?

Section 5.1.1 of Attachment 1 of the application, the Environmental Assessment (EA), contains a discussion and summary of the questionnaire responses.³⁵ The respondents were asked to rank different factors as the most important consideration in terms of land use, their preference for paralleling existing corridors when considering potential routes for the proposed project, and to rank a list of habitable structures, community values, and other resources in order of importance as it pertains to maximizing the distance from the Proposed Project.³⁶ Overwhelmingly, questionnaire responses indicated a preference for maximizing the distances relative to residences, schools, churches, and recreation areas.³⁷ Additionally, respondents noted a desire to keep the Proposed Project as short as possible, compensation for loss of property values, aesthetic values, impacts on natural resources, impacts on farming and ranching, and health and safety concerns.³⁸ The top four preliminary route segments of most concern were D1-D4.³⁹

E. Preliminary Order Issue No. 5: Need

Taking into account the factors set out in Public Utility Regulatory Act (PURA) § 37.056(c), are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a)? In addition, please address the following:

³² Oncor Ex. No. 9.

³³ Oncor Ex. No. 1, Attachment 1 at Page 5-1.

³⁴ *Id.*

³⁵ *See* Application, Attachment 1 at Page 5-2.

³⁶ *Id.*, Attachment 1 at Page 5-1.

³⁷ *Id.*

³⁸ *See id.*, Attachment 1 at Pages 5-1 to 5-11.

³⁹ *See id.*

- a) **How do the proposed transmission facilities support the reliability and adequacy of the interconnected transmission system?**
- b) **Do the proposed transmission facilities facilitate robust wholesale competition?**
- c) **What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed transmission facilities?**
- d) **Are the proposed transmission facilities needed to interconnect a new transmission service customer?**

It is Staff's position that the Proposed Project is necessary for the service, accommodation, convenience, or safety of the public.⁴⁰

F. Preliminary Order Issue No. 6: Historical load, forecasted load growth, and additional load currently seeking interconnection

In considering the need for additional service under PURA § 37.056(c)(2) for a reliability transmission project, please address the historical load, forecasted load growth, and additional load currently seeking interconnection?

It is Staff's position that the Proposed Project is needed to address reliability issues in the Roanoke area, which is one of the highest growth areas in the Dallas-Fort Worth Metroplex.⁴¹ The current power transfer and load-serving capabilities of the existing transmission system are approaching their operating limits at current demand levels.⁴²

G. Preliminary Order Issue No. 7: Distribution and other Alternatives

Are the proposed transmission facilities the better option to meet this need when compared to using distribution facilities? If the applicant is not subject to the unbundling requirements of PURA § 39.051, are the proposed transmission facilities the better option to meet the need when compared to a combination of distributed generation and energy efficiency?

It is Staff's position that the Proposed Project is the best option when compared to other alternatives.⁴³

⁴⁰ Staff Ex. No. 2 at 22:15-24:2.

⁴¹ *Id.* at 22:14-18.

⁴² *Id.* at 22:15-23:1.

⁴³ *Id.* at 24:11-14.

H. Preliminary Order Issue No. 8: Routing

Weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B), which proposed transmission-line route is the best alternative?

The Commission may grant a CCN only if it finds that it is necessary for the service, accommodation, convenience, or safety of the public.⁴⁴ PURA § 37.056(c) provides routing criteria to be considered in an electric CCN proceeding.⁴⁵ Furthermore, 16 TAC § 25.101(b)(3)(B) presents additional criteria to be considered in an electric CCN.⁴⁶ Staff analyzes routing criteria under PURA § 36.056(c) and 16 TAC § 25.101(b)(3)(B) as demonstrated below:

1. Effect of Granting Certificate on Oncor and Any Electric Utility Serving the Proximate Area

The transmission line that is the subject of Oncor's application will not be directly connected to any other electric utility and no other electric utility is involved in the construction of the Proposed Project.⁴⁷ Additionally, the Proposed Project does not utilize existing facilities owned by any other electric utility.⁴⁸ Portions of some of the proposed routes, are within the city limits of Flower Mound, North Lake, Justin, Fort Worth, New Fairview, and Rhome.⁴⁹

2. Community Values

Staff's analysis of community values supports selection of Route 179-C. Specifically, in response to the public notice and questionnaires, respondents provided specific preferences and concerns with the proposed routes, as detailed above in Section V.D. It is Staff's position that Route 179-C would meet some of the preferences and mitigate some of the concerns expressed by member of the community at the open house and in comments by intervenors.⁵⁰ Route 179-C's centerline is within 500 feet of 98 habitable structures, which is tied for 4th least of the proposed

⁴⁴ PURA § 37.056(a).

⁴⁵ *See* PURA § 37.056(c).

⁴⁶ *See* 16 TAC § 25.101(b)(3)(B).

⁴⁷ Oncor Ex. No. 1 at 8.

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ Staff Ex. No. 2 at 28:5-30:10.

alternative routes, 5 more than the route with the least habitable structures within 500 feet of its centerline Route 164.⁵¹ Route 179-C does not cross any parks or recreational areas and has four parks or recreational areas within 1,000 feet of its centerline, just one more than the routes with the fewest within 1,000 feet of their centerline.⁵² In response to the specific routing concerns of the community, Route 179-C does not use Segments D1-D4 and along FM Road 407.⁵³ However, none of the routes in the application use those preliminary segments as they were eliminated in response to the feedback received in the community involvement process.⁵⁴ Route 179-C avoids using most of the segments around the Canyon Falls community, in particular Segment E5.⁵⁵ Route 179-C utilizes Segments C1, C7 and C21.⁵⁶ C21 was part of the preliminary Segment C2, which was split into Segments C21 and C22 in response to the community involvement process.⁵⁷ Route 179-C utilizes Segment L4 which is 6,000 feet from the Propwash Airport, this is 4,000 feet farther than Segment M8 which it does not utilize.⁵⁸ Route 179-C does utilize Segment E6 but not Segment C6.⁵⁹ Route 179-C does utilize Segment J3.⁶⁰ In response to the other routing concerns by individuals, Route 179-C avoids Segments F2, F3, E8, M4, R1, R3, R6, T5, T4, T3, T2, Q5, Q2, Q1, O7, G9, and D3 which were segments specifically opposed by commenters.⁶¹ Route 179-C also utilizes both Segments A0 and A4 as requested by commenters. Route 179-C, however, does utilize Segments M5, R2, and R5 which were segments specifically opposed.⁶²

In response to the general concerns, Route 179-C is the 29th shortest route of 84.⁶³ Route 179-C is 5,249 feet longer than the shortest route, Route 16, but 10,596 shorter than the longest

⁵¹ *Id.* at 49:6-51:2.

⁵² *Id.* at 31:6-15.

⁵³ *Id.* at 28:15-16.

⁵⁴ *Id.* at 28:16-29:1.

⁵⁵ *Id.* at 29:1-3.

⁵⁶ *Id.* at 29:3.

⁵⁷ *Id.* at 29:3-5.

⁵⁸ *Id.* at 29:5-7.

⁵⁹ *Id.* at 29:7-8.

⁶⁰ *Id.* at 29:8.

⁶¹ *Id.* at 29:9-11.

⁶² *Id.* at 29:11-14.

⁶³ *Id.* at 29:15.

route, Route 216.⁶⁴ Route 179-C crosses the 17th least amount of rangeland with 58,417 feet, 11,959 feet longer than the shortest length by Route 26 and 17,901 feet shorter than the longest length by Route 187.⁶⁵ However, Route 179-C crosses the 69th least amount of cropland and hay meadow land with 22,691 feet, 10,344 feet longer than the shortest length by Route 164R and 13,540 feet shorter than the longest length by Route 69.⁶⁶

3. Recreational Park Areas

Twenty parks and recreational areas are either crossed or within 1,000 feet of the centerline of the proposed alternative routes.⁶⁷ The number of parks or recreation areas either cross or within 1,000 feet of the centerline of the proposed alternative routes ranges from 3 (Routes 29, 33, 36, 41, 42, 86, 207, 217, 218, and 29R) to 11 (Routes 117 and 119).⁶⁸ Routes range from crossing no parks or recreation areas (Routes 29, 33, 36, 41, 42, 43, 44, 54, 58, 71, 86, 87, 154, 175, 176, 178, 179, 184, 185, 207, 216, 221, 179-A, 179-B, 179-C, and 29R) to crossing 3,844 feet of parks and recreational areas (Routes 92, 94, 96, 103, 108, 143, and 146).⁶⁹ Route 179-C crosses no parks or recreational areas and has four parks and recreational areas within 1,000 feet of its centerline.⁷⁰

4. Cultural, Aesthetic, and Historical Values

There are no properties listed on the National Register of Historic Places within 1,000 feet of any of the centerlines of any proposed routes.⁷¹ There are two recorded archaeological or historical sites located within 1,000 feet of the centerlines of the proposed routes.⁷² Additionally,

⁶⁴ *Id.* at 29:16-30:1.

⁶⁵ *Id.* at 30:1-3.

⁶⁶ *Id.* at 30:3-6.

⁶⁷ Oncor Ex. No. 1 at 16.

⁶⁸ Staff Ex. No. 2 at 31:7-10.

⁶⁹ *Id.* at 31:10-13.

⁷⁰ *Id.* at 31:13-15.

⁷¹ Oncor Ex. No. 1, Attachment 1 at Page 7-26.

⁷² *Id.* At Page 7-27.

there are two cemeteries within 1,000 feet of some of the proposed routes.⁷³ Route 179-C's centerline is within 610 feet of Dunham Cemetery on Segment A0, within 90 feet of a historical house on Segment L2, and crosses the former school house on Segment M1.⁷⁴ The length of the routes across areas of high archeological/historical site potential ranges from 28,161 feet for Route 186 to 64,206 feet for Route 28.⁷⁵ Route 179-C crosses 56,753 feet of areas of high archeological/historical site potential.⁷⁶ Aesthetic values would be negatively impacted by any of the proposed routes.⁷⁷

5. Environmental Integrity

The Proposed Project is expected to cause only short-term effects to water, soil, and ecological resources during the initial construction phase.⁷⁸ Although it is possible erosion and soil compaction will occur during the initial construction phase, Oncor has confirmed it will employ erosion control during this phase, including development of a Storm Water Pollution Prevention Plan to minimize impacts.⁷⁹ Route 179-C has 11,311 feet of its length across upland woodlands, which is 3,289 feet longer than the shortest length of Route 217 and 4,379 feet shorter than the longest length of Route 26.⁸⁰ The length of riparian areas along the right-of-way of Route 179-C is 11,536 feet, which is 6,957 feet longer than the shortest length of Route 187 and 4,182 feet shorter than the longest length of Route 28.⁸¹ Route 179-C crosses no potential wetlands but does have one location of known rare or unique plants within its right-of-way, while some routes have none.⁸² While TPWD selected Route 137 as the route with the least potential impact on environmental integrity, it is significantly higher in the number of habitable structures within close

⁷³ *Id.* at Page 7-26.

⁷⁴ Staff Ex. No. 2 at 32:3-18.

⁷⁵ *Id.* at 33:7-8.

⁷⁶ *Id.* at 33:8-9.

⁷⁷ *Id.* at 33:19-34:8.

⁷⁸ *Id.* at 35:7-37:12.

⁷⁹ *Id.* at 35:10-14.

⁸⁰ *Id.* at 37:17-38:1.

⁸¹ *Id.* at 38:1-3.

⁸² *Id.* at 38:3-7.

proximity and costs approximately \$9M more than Route 179-C.⁸³ After reviewing the information provided by Oncor and TPWD, it is Staff's position that Route 179-C is acceptable and comparable to the other routes from an environmental perspective.⁸⁴

6. Engineering Constraints

Staff did not identify any specific engineering constraints that are not present in a usual transmission line project and noted that all possible constraints can be adequately addressed by using design and construction practices and techniques that are usual and customary in the electric utility industry.⁸⁵

7. Costs

Route 179-C is the 21st least expensive route at \$251,143,000.00.⁸⁶ It is Staff's position that Route 179-C is still preferable, based on other factors, notably its overall length, the percentage of length paralleling or utilized as compatible right-of-way, the amount of habitable structures, and the amount of acreage crossing parks and recreational areas.

8. Use of Existing Corridors

The paralleling of existing transmission line right-of-way, existing public roads, highways, and railways for all 85 routes ranges from approximately 17.25% of total length to 39.655% of total length.⁸⁷ As previously discussed, Route 179-C parallels or utilizes existing compatible right-of-way and apparent property lines for 23.25% of its length, the 53rd highest percentage of compatible right-of-way.⁸⁸ One of the main benefits of paralleling compatible right-of-way is to minimize the impact on landowners. The proposed routes with a higher percentage also directly impact more habitable structures, which results in more impact on landowners. Further, Route 179-

⁸³ *Id.* at 40-41 and 49-51.

⁸⁴ *Id.* at 38:9-13.

⁸⁵ *Id.* at 38:17-39:1.

⁸⁶ *Id.* at 41:2-3.

⁸⁷ *See id.* at 44:14-47:4.

⁸⁸ *Id.*

C is less expensive than other routes with higher paralleling compatible right-of-way.⁸⁹ It is Staff's position that, based on the information outlined above, Route 179-C is the superior route.

9. Prudent Avoidance

The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."⁹⁰ Limiting exposure to electric and magnetic fields can be accomplished by choosing a route that has fewer habitable structures in close proximity to the route.

The alternative routes impact between 93 and 400 habitable structures.⁹¹ Route 179-C impacts 98 habitable structures, making it the fourth least of any route.⁹² Oncor's recommended route, Route 179, impacts 97 habitable structures but utilizes less paralleling compatible right-of-way and costs approximately \$2.4 million more, while TPWD's recommend route, Route 137, impacts significantly more habitable structures, at 228 habitable structures.⁹³

10. Additional Routing Concerns

Staff does not have any additional routing concerns at this time. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

11. Summary of Routing Recommendation

Consistent with the above discussion, Staff recommends approval of Route 179-C after weighing the factors under PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B). Route 179-C best balances the criteria and has many advantages over the other alternative routes.

I. Preliminary Order Issue No. 9: Alternative Routes/Configurations

Are there alternative routes or configurations of facilities that would have a less negative effect on landowners? What would be the incremental cost of those routes or configurations of facilities?

⁸⁹ *Id.* at 47:12.

⁹⁰ 16 TAC § 25.101(a)(6).

⁹¹ *See* Staff Ex. No. 2 at 49:8-51.

⁹² *Id.* at 51:1-2.

⁹³ *Id.* at 51:4-9.

Some intervenors assert that routes other than Route 179-C would have less of a negative impact on landowners. However, the evaluation of this criterion is subjective and Staff recommends that Route 179-C adequately balances the concerns regarding the impact on landowners with the other statutory criteria based on the information that has been made available to Staff at this time. Staff reserves the right to supplement or modify its recommendation in the reply brief, if necessary.

J. Preliminary Order Issue No. 10: Contributions and Accommodations for Alternative Routes/Configurations

If alternative routes or configurations of facilities are considered because of individual landowners' preferences, please address the following issues:

- a) **Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?**
- b) **Have the accommodations to landowners diminished the electric efficiency of the line or reliability?**

To Staff's knowledge, affected landowners have not made explicit contributions to offset any additional costs associated with the accommodations at this time, nor is Staff aware of the impact of proposed modifications to segments regarding the electric efficiency of the line or reliability.

K. Preliminary Order Issue No. 11: Necessity of Transmission facilities to meet state or federal reliability standards

Are the proposed transmission facilities necessary to meet state or federal reliability standards?

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

L. Preliminary Order Issue No. 12: Estimated Cost to Consumers

What is the estimated cost of the proposed transmission facilities to consumers?

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

M. Preliminary Order Issue No. 13: Estimated congestion cost savings for consumers

What estimated congestion cost savings for consumers that may result from the proposed transmission facilities ?

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

N. Preliminary Order Issue No. 14: Adequacy of Best Management Practices

Are the best management practices for construction and operating transmission facilities that are standard in the Commission's electric CCN orders adequate? If not, what additional practices should be required for the proposed transmission facilities?

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

O. Preliminary Order Issue No. 15: Additional Best Management Practices

For additional practice proposed, please address the following:

- a) **What is the additional cost to design, construct, and operate the proposed transmission facilities, including cost to consumers?**
- b) **What benefit, if any, will the proposed practice provide?**
- c) **What effect, if any, will the proposed practice have on the reliability of the transmission system?**
- d) **What effect, if any will the proposed practice have on the design, construction, or operation of the proposed transmission facilities?**
- e) **What effect, if any, will the proposed practice have on the expected date to energize the proposed transmission facilities?**

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

P. Preliminary Order Issue No. 16: Texas Parks and Wildlife Recommendations

Did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application in accordance with section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:

- a) **What modifications, if any, should be made to the proposed transmission facilities as a result of any recommendations or comments?**

- b) **What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?**
- c) **What other disposition, if any, should be made of any recommendations or comments?**
- d) **If any recommendation or comment should not be incorporated in the proposed transmission facilities or the final order, should not be acted on, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.**

Mr. Poole recommended several mitigation measures that he found sufficient to address most of TPWD's concerns.⁹⁴ These measures include the following proposed ordering paragraphs:

1. Oncor shall conduct surveys, if not already completed, to identify pipelines that could be affected by the transmission lines and coordinate with pipeline owners in modeling and analyzing potential hazards because of alternating-current interference affecting pipelines being paralleled.
2. If Oncor encounters any archeological artifacts or other cultural resources during project construction, work must cease immediately in the vicinity of the artifact or resource, and the discovery must be reported to the Texas Historical Commission. In that situation, Oncor must take action as directed by the Texas Historical Commission.
3. Oncor must follow the procedures to protect raptors and migratory birds as outlined in the following publications: *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, Edison Electric Institute and Avian Power Line Interaction Committee, Washington, D.C. 2012; *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Edison Electric Institute, Avian Power Line Interaction Committee, and the California Energy Commission, Washington, D.C. and Sacramento, CA 2006; and *Avian Protection Plan Guidelines*, Avian Power Line Interaction Committee and United States Fish and Wildlife Service, April 2005. Oncor must take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.

⁹⁴ See *id.* at 17:17-20:17.

4. Oncor must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. Oncor must ensure that the use of chemical herbicides to control vegetation within the rights-of-way complies with rules and guidelines established in the Federal Insecticide Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.
5. Oncor must minimize the amount of flora and fauna disturbed during construction of the transmission lines, except to the extent necessary to establish appropriate right-of-way clearance for the transmission lines. In addition, Oncor must revegetate, using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, Oncor must avoid adverse environmental influence on sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service.
6. Oncor must implement erosion control measures as appropriate. Erosion control measures may include inspection of the right-of-way before and during construction to identify erosion areas and implement special precautions as determined necessary. Oncor must return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or the landowner's representative. Oncor is not required to restore the original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the lines.
7. Oncor must use best management practices to minimize the potential impacts to migratory birds and threatened or endangered species.
8. Oncor must cooperate with directly affected landowners to implement minor deviations from the approved route to minimize the burden of the transmission line. Any minor deviations from the approved route must only directly affect landowners who were sent notice of the transmission line in accordance with 16 TAC § 22.52(a)(3) and landowners that have agreed to the minor deviation.
9. Oncor must report the transmission line approved by the Commission on its monthly construction progress reports before the start of construction to reflect the final estimated cost and schedule in accordance with 16 TAC § 25.83(b). In addition, Oncor must provide

final construction costs, with any necessary explanation for cost variance, after completion of construction when all costs have been identified.

Q. Preliminary Order Issue No. 17: Permits

What permits, licenses, plans, or permission will be required for construction and operation of the proposed transmission facilities? If any alternative route requires permission or an easement from a state or federal agency, please address in detail the following:

- a) What agency is involved, and what prior communications has the applicant had with the agency regarding the proposed transmission facilities?**
- b) Has the agency granted the required permission or easement? If not, when is a decision by the agency expected?**
- c) What contingencies are in place if the agency does not grant the required permission or easement or if the process to obtain the required permission or easement would materially affect the estimated cost, proposed design plans, or anticipated timeline to construct the proposed transmission facilities?**

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

R. Preliminary Order Issue No. 18: Coastal Management Program

Is any part of the proposed transmission facilities located within the coastal management program boundary as defined in 31 TAC § 503.1(a)? If so, please address the following issues:

- a) Do the facilities comply with the goals and applicable policies of the Coastal Management Program in accordance with 16 TAC § 25.102(a)?**
- b) Will the facilities have any direct and significant effects on any of the applicable coastal natural resource areas specified in 31 TAC § 501.3(b)?**

Staff notes that the study area is not located within the Texas Coastal Management Program boundary.⁹⁵

S. Preliminary Order Issue No. 19: Seven-year Limitation of Authority

Are the circumstances for this line such that the seven-year limit discussed in section III of this Order should be changed?

⁹⁵ *Id.* at 22:11.

Oncor has not described any special circumstances that would support modifying the seven-year deadline for Oncor to commercially energize the transmission line.⁹⁶

T. Preliminary Order Issue No. 20: Impact on Generators

Will anything occur during construction that will preclude or limit a generator from generating or delivering power or that will adversely affect the reliability of the ERCOT system?

Staff does not have any comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

U. Preliminary Order Issue No. 21: Route Modifications

If complete or partial agreement of the parties is reached on a route that relies on modifications to the route segments as noticed in the application, please address the following issues:

- a) Did the applicant comply with the additional notice requirements of 16 TAC § 22.52(a)(2) and (a)(3)(C)?**
- b) Was written consent obtained from landowners directly affected by the proposed modifications to the route segments?**

The parties have not reached a complete or partial agreement on a route.

VI. CONCLUSION

Based on the foregoing discussion, Staff recommends the adoption of Route 179-C. Specifically, Route 179-C is comparable, if not superior, to the other alternative route options based on the evidence and the evaluation of the qualitative and quantitative criteria.

⁹⁶ *Id.* at 39:5-6.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 7, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Anthony Kanalas
Anthony Kanalas