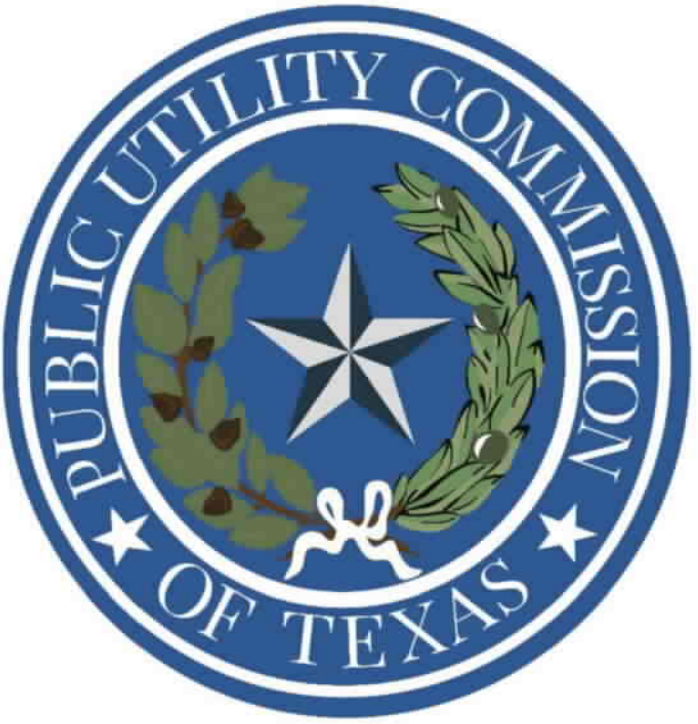

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APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE RAMHORN HILL – DUNHAM 345 KV TRANSMISSION LINE IN DENTON AND WISE COUNTIES	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

EDGAR BRENT WATKINS AND MARY ANN LIVENGOOD'S INITIAL POST-HEARING BRIEF

Intervenors Edgar Brent Watkins and Mary Ann Livengood, Co-Trustees of the Watkins Family Trust (collectively referred to herein as "Watkins") submit this Initial Post-Hearing Brief in connection with the Application of Oncor Electric Delivery Company, LLC ("Applicant") for the above-captioned Certificate of Convenience and Necessity ("CCN") (the "Application"). Watkins prays that the Administrative Law Judges ("ALJs") issue a Proposal for Decision ("PFD") recommending the Texas Public Utility Commission ("PUC" or "Commission") approve Route 179-C.

I. INTRODUCTION AND SUMMARY

The PUC Staff got it right when they endorsed Route 179-C as the "best meets" route. The preponderance of the evidence in this case strongly supports the selection of Route 179-C, especially as it pertains to the western study area,[1] as the route that best addresses the requirements of PURA and the PUC Substantive Rules. Even if the ALJs or Commission are favorably inclined to adopt the La Estancia alternative routes in the eastern study area, those alternative routes will

[1] The "western study area" consists of all links west of and including Link L2.

have no impact on the path Route 179-C follows in the western study area or how Route 179-C differs from Route 179 in the western study area.

Route 179-C emerged as the best meets route through an RFI from Watkins. At the outset of the case, the Applicants' Application identified an adequate number of alternative routes and concluded that Route 179 best addressed the requirements of PURA and the PUC Substantive Rules.[2] During the pendency of the case, Watkins developed an additional route, Route 179-C, and supported said route through the expert testimony of Brian Almon.[3] It is important to note that Route 179-C and Route 179 only differ in the western study area, as both routes use the same links from the Dunham Switch all the way until the node at the intersection of Links M1 and M2 in the western study area.[4]

Watkins also gathered very extensive support and non-opposition to Route 179-C through sending RFIs to 61 initial parties.[5] Of the 61 parties receiving RFIs, 44 indicated either their support for or non-opposition to Route 179-C.[6] 10 parties said they oppose Route 179-C due to its use of certain links that are also used by Route 179.[7] These parties presumably do not support Route 179 either. 7 *pro se* parties did not respond to Watkins' RFIs concerning Route 179-C.[8] Of all 61 parties receiving RFIs, only 1 indicated he did not want Route 179-C, although his RFI response is somewhat unclear and he would not be affected by Route 179-C.[9] For reference, all of the RFI responses are included as Exhibit "A" to Mr. Almon's rebuttal testimony.[10]

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[2] Application at 24.
[3] Watkins Ex. 2; Watkins Ex. 3.
[4] Watkins Ex. 2, Page 18, Lines 10-13; Pages 33-34.
[5] *See* Watkins Ex. 3, Pages 9-12.
[6] *See Id*, Pages 12-16.
[7] *See Id*, Pages 16-18.
[8] *Id*, Page 16, Lines 6-8; Page 18, Line 20; Page 19, Lines 1-3.
[9] *Id*, Page 18, Line 17.
[10] *Id.* Pages 20-296.

The PUC Staff, Oncor, a third-party routing expert, and many significant landowners ultimately aligned in their support of Route 179-C. Subsequent to the filing of intervenors' direct testimony, PUC Staff filed the direct testimony of John Poole, who also supported Route 179-C.[11] Oncor's representative, Brenda Perkins, was also sent an RFI and she responded "yes" when asked if Oncor could support Route 179-C.[12] Mrs. Perkins confirmed her affirmative answer on cross-examination.[13] Furthermore, the routing expert hired by DHL Supply Chain, Jason Buntz, testified at the hearing on the merits that he could support Route 179-C.[14] Two significant parties directly impacted by Route 179-C in the western study area indicated in later RFI responses that they, too, support Route 179-C.[15] Another significant landowner directly impacted by Route 179-C, PMB Rolling V Land, LP, stipulated on the record during the hearing on the merits that PMB Rolling V Land, LP is not opposed to the links utilized by Route 179-C (i.e., Links Z, V4 and V3) through its property to reach the Ramhorn Hill Switch.[16]

At the conclusion of the hearing on the merits, no party in the western study area had presented any evidence to rebut or oppose the selection of Route 179-C in the western study area. A single Statement of Position was filed by Todd Family Holdings, LP that referenced opposition to the use of Link V3, but this Statement of Position is not evidence and, at the hearing on the merits, the intervenor did not cross examine any witnesses or marshal any evidence whatsoever to support its alleged opposition to the link. In fact, most parties seemed to acknowledge Route 179-C was likely to be selected in the western study area due to the large amount of evidence and testimony supporting the favorable characteristics of Route 179-C when compared to Route 179,

[11] Staff Ex. 1, Pages 24-25.
[12] Watkins Ex. 10.
[13] TR (Vol. 1), Page 214.
[14] TR (Vol. 1), Page 239.
[15] Watkins Ex. 13; Watkins Ex. 14.
[16] TR (Vol. 1), Pages 241-242. The TR erroneously references Link B3 but should read "V3" instead. Link B3 does not exist.

including but not limited to the fact that Route 179-C is $2,464,000 less expensive than Route 179, Route 179-C is 0.86 miles (4,525') shorter than Route 179, Route 179-C only affects one more habitable structure than Route 179, and Route 179-C parallels compatible corridors for a greater percentage of its length than Route 179.[17]

There were no parties presenting evidence at the hearing on the merits of which Watkins is aware, including the Applicants and the PUC Staff, opposed to the selection of Route 179-C over Route 179 as the route that best addresses the requirements of PURA and the PUC Substantive Rules. In fact, the 4 key expert witnesses testified at the hearing on the merits that several key factors impacted their decision to support Route 179-C.

- In her direct testimony, Brenda Perkins, on behalf of Oncor, identified the cost of the line, the length of the line, and the number of habitable structures directly affected by the line as key factors.[18] On cross-examination she discussed these key factors as reasons for her support of Route 179-C.[19]
- In his direct testimony, expert Brian Almon, on behalf of Watkins, identified the cost of the line, the length of the line, the number of habitable structures directly affected by the line and the percent of paralleling as 4 key factors.[20] In his direct testimony, he said these 4 key factors, among others, caused him to support Route 179-C.[21] At the hearing on the merits, all intervenors waived cross of Mr. Almon.
- In his direct testimony, expert Jason Buntz, on behalf of DHL Supply Chain, identified the cost of the line, the length of the line, the number of habitable structures directly affected

[17] Watkins Ex. 11.
[18] Oncor Ex. 4, Pages 9-10.
[19] TR (Vol. 1), Pages 209-211, 213.
[20] Watkins Ex. 2, Page 13.
[21] *See Id*, Page 14.

by the line and the percent of paralleling as 4 key factors.[22] On cross-examination he said these 4 key factors caused him to support Route 179-C.[23]

- In his direct testimony, PUC Staff expert John Poole, identified the cost of the line, the length of the line, and the number of habitable structures directly affected by the line as key factors.[24] On cross-examination he discussed these factors, as well as the percent of paralleling, as reasons for his support of Route 179-C.[25]

Two of Watkins' admitted exhibits provide a convenient summary of the evidence regarding the 4 key factors on how these factors support Route 179-C. Here are those exhibits for ease of reference:

The remainder of this page has been intentionally left blank.

[22] DHL Ex. 1, Page 8.
[23] *See* TR (Vol. 1), Page 239, Lines 7-10.
[24] Staff Ex. 1, Page 52.
[25] TR (Vol. 2), Pages 19-20, 23-24, 27-29.

Route 179-C v. Route 179

	Route 179-C	Route 179	Difference
Length:			
- Feet	110,373 feet[1]	114,898 feet[1]	(4,525 feet)
- Miles	20.9 miles	21.8 miles	(0.86 miles)
Cost:			
- Line with substation costs	$251,143,000[2]	$253,607,000	($2,464,000)
- Line costs	$176,285,000	$178,749,000	($2,464,000)
Habitable Structures:	98 [3]	97 [3]	+1
Parallels existing compatible corridors:			
- percentage	23.25%[1]	22.68%[1]	+.57%

[1] Poole Direct Testimony, page 46
[2] See Oncor Exhibit 24
[3] Poole Direct Testimony, page 49

Watkins Exhibit 11 - Amended - Page 1

John Poole – Public Utility Commission

Comparing **Route 179** to **Route 179-C**:

Route **179-C** is preferred:

- Shorter
- Less Expensive
- Makes better use of compatible ROWs
- No difference because neither crosses park and recreational areas

Comparing **Route 179-C** to all other alternative routes:

Route **179-C** is the recommended route:

- 21st least expensive proposed route (22nd least expensive proposed route after Oncor's errata filing)
- 29th shortest route
- Tied for 4th least amount of habitable structures
- None of its length crosses parks or recreational areas
- None of its length crosses potential wetlands

Watkins Exhibit 12 - Amended - Page 1

In summary, the record supports that Route 179-C should be recommended for the following reasons:

1. Route 179-C is equal to, or more favorable than, Route 179 in 24 of the 35 enumerated evaluation criteria developed by Halff and included in the Application, including 3 out of 4 of Oncor's "significant factors" (*length, estimated cost, habitable structures,* and [length] *parallel to existing compatible corridors).*[26]

[26] *See* Oncor Ex. 25.

2. Route 179-C utilizes the same links to approach the Ramhorn Hill Switch as those recommended by TPWD: Links R5-U3-V3-V4-Z.[27]
3. Particularly with regard to the parties located in the western study area, all landowner parties that have presented evidence in the case support or do not oppose Route 179-C, including several parties directly impacted by Route 179-C (Alliance West, LP, Denton County Land and Cattle, LP, Denton County Land and Cattle 2, and PMB Rolling V Land, LP).
4. Even if the La Estancia alternative routes are selected, those alternative routes do not impact Route 179-C in the western study area or how Route 179-C differs from Route 179 solely in the western study area.
5. The Applicant can support Route 179-C.[28]
6. PUC Staff actively supports Route 179-C.[29]
7. In comparison to Route 179:
    a. Route 179-C is $2,464,000 less expensive than Route 179.[30]
    b. Route 179-C is 4,525 feet (0.86 miles) shorter than Route 179.[31]
    c. Route 179-C parallels existing compatible corridors for 0.57% more of its length.[32]
    d. Route 179-C only impacts one more additional habitable structure than Route 179.[33]
    e. Route 179-C has a shorter length of route through commercial/industrial areas.[34]

[27] *See* Staff Ex. 1, Page 17-18; Watkins Ex. 5, Page 5.
[28] Watkins Ex. 10; TR (Vol. 1), Page 214.
[29] Staff Ex. 1, Pages 52-53; TR (Vol. 2), Pages 28-29.
[30] Watkins Ex. 11; *See* Oncor Ex. 25.
[31] Watkins Ex. 11; *See* Oncor Ex. 25.
[32] Watkins Ex. 11; *See* Oncor Ex. 25.
[33] Watkins Ex. 11; *See* Oncor Ex. 25.
[34] *See* Oncor Ex. 25.

f. Route 179-C has a shorter length of route across rangeland pasture.[35]

g. Route 179-C has a significantly shorter length of route parallel to streams (695' vs. 1,351').[36]

h. Route 179-C crosses fewer Farm to Market (F.M.), county roads, or other street crossings.[37]

i. Route 179-C has a shorter estimated length of right-of-way within the foreground visual zone of park/recreational areas.[38]

Because the testimony has primarily focused on Route 179 and Route 179-C, Watkins' brief will highlight the advantages of Route 179-C over Route 179.

II. ROUTE: PRELIMINARY ORDER ISSUE NO. 8

Which proposed transmission line route is the best alternative weighing the factors in PURA §37.056(c) and P.U.C. Subst. R. 25.101(b)(3)(B)?

For the reasons explained herein, Route 179-C is the best route that should be recommended to the PUC.

A. Community Values

The community values factor supports Route 179-C. PURA §37.056(c)(4) requires the Commission to consider "community values" in determining the most compliant route. The Commission has previously defined "community values" as "a shared appreciation of an area or other natural or human resource by a national, regional, or local community. Adverse effects upon community values consist of those aspects of a proposed project that would significantly and negatively alter the use, enjoyment, or intrinsic value attached to an important area or resource by

[35] *See Id.*
[36] *See Id.*
[37] *See Id.*
[38] *See Id.*

a community"[39] During the development of the alternative segments for this project, Oncor solicited comments from landowners, public officials, and other interested residents and parties by hosting two public open-house meetings in the local area.[40] Individuals attending the meeting were provided with a questionnaire soliciting comments on the project.[41] Oncor received 71 questionnaire responses during the meetings and "many" questionnaire responses at a later date.[42] Questionnaire respondents indicated an overwhelming preference for maximizing distances relative to the following: schools, churches, residences and recreational areas.[43]

Routes 179-C and 179 are very similar in with regard to these four community values in the western study area (i.e., maximizing distances from schools, churches, residences and recreational areas), however, Route 179-C does hold the advantage. Route 179-C impacts only one additional habitable structure (a single family residence[44]), but Route 179-C also has 4,212 less feet of its length in the foreground visual zone of parks and recreational areas.[45] The overall negative impact to the community in terms of "a shared appreciation of an area" and "aspects of a proposed project that would significantly and negatively alter the …enjoyment…to an important area or resource by a community" would be greater by adding an additional 4,212 feet (0.8 mile) of transmission line in the foreground visual zone of parks and recreation areas as opposed to impacting only one additional single family residence. Route 179-C is superior to Route 179 in the western study area in terms of community values.

B. Parks and Recreational Areas

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[39] *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 345-kilovolt Double-circuit Line in Caldwell, Guadalupe, Hays, Travis and Williamson Counties, Texas*, Docket No. 33978, Order at FoF 118 (Oct. 10, 2008).
[40] Oncor Ex. 4, Page 4.
[41] *Id.*, Page 5.
[42] Oncor Ex. 1, Page 166.
[43] *Id.*
[44] *See* Oncor Ex. 1, Page 594.
[45] *See* Oncor Ex. 25.

The parks and recreational areas factor supports Route 179-C. Neither Route 179-C nor Route 179 cross any parks or recreational areas.[46] However, as just stated above, Route 179-C has 4,212 less feet (0.8 mile) of its length in the foreground visual zone of parks and recreational areas when compared to Route 179.[47] For this reason, Route 179-C is superior to Route 179 in the western study area in terms of parks and recreational areas.

C. Historical and Aesthetic Values

None of the routing experts at the hearing on the merits focused on historical and aesthetic values as one of their key factors in their analysis. However, Route 179-C and Route 179 are very similar with regard to with regard to historical values. Both Route 179-C and Route 179 cross one recorded cultural resource site.[48] Both routes have three recorded cultural resources within 1,000 feet of route centerline.[49] Route 179-C does have approximately 18% more of its length across areas of high archeological and/or historical site potential compared to Route 179,[50] but, again, this is not a key factor in this particular case and is heavily outweighed by other more important routing considerations that were specifically enumerated by PUC Staff, Oncor, Brian Almon and Jason Buntz.

Concerning aesthetics, Route 179-C has more estimated length of ROW within the foreground visual zone of U.S. and State Highways than Route 179 in the western study area.[51] However, Halff noted in the EA that "the significance of the impact is directly related to the quality of the view," and that "given the urban setting and level of development along some of these corridors, the visual foreground zone is often encumbered in several directions."[52] The EA goes

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[46] *See Id.*
[47] *See Id.*
[48] *See Id.*
[49] *See Id.*
[50] *See Id.*
[51] *See Id.*
[52] Oncor Ex. 1, Pages 214-215.

on to state that "Although structures or conductors may not be entirely obstructed by commercial or residential development, the backdrop to the viewshed along corridors such as SH 114, US 81/287 and FM 156 would be occupied by homes, businesses or other urban elements (e.g., light poles, traffic lights, cell towers).[53] In addition, based on the continuing rapid development in the area, the remaining open viewsheds will ultimately be developed and incorporated into a suburban aesthetic. In other words, the extensive existing and planned development in the western study area indicates the quality of the view along U.S. and State Highways is already diminished thereby minimizing the significance of the impact of the proposed transmission line on these views.

In contrast to aesthetic values along the already lower quality views along U.S. and State Highways, Route 179-C has less estimated length of ROW within the foreground visual zone of parks and recreational areas than Route 179.[54] This factor is more important to the community than the length of ROW within the foreground visual zone of U.S. and State Highways. As already noted, during the public involvement process, one of the items questionnaire respondents overwhelmingly indicated was a preference for maximizing distances relative to recreational areas.[55] Also, there were multiple parties participating in the case that indicated a strong preference for routing the transmission line along existing roadways. As far as aesthetic values in this particular case, it is evident that avoiding visual impacts to parks and recreational areas is more important to the community than avoiding visual impacts to already encumbered lower quality views along U.S. and State Highways in this developing area. For this reason, Route 179-C should be considered superior to Route 179 in terms over overall aesthetic values.

D. Environmental Integrity

[53] *Id.*, Page 215.
[54] *See* Oncor Ex. 25.
[55] Oncor Ex. 1, Page 166.

In this particular case, environmental integrity has not generally been focused upon as one of the determinative factors in the routing analysis. In fact, the EA states that "none of the alternative routes for the proposed project are anticipated to have any significant impacts to the natural resources of the area."[56] Furthermore, PUC Staff's expert, John Poole, when asked whether the proposed project would present a negative impact to environmental integrity, answered "No."[57] With respect to specific routing criteria related to environmental integrity, Routes 179-C and 179 are very similar with only minor differences.[58] However, it should be noted that TPWD's recommended Route 137 utilizes the same links as Route 179-C to approach the Ramhorn Hill Switch, Links R5-U3-V3-V4-Z, whereas Route 179 does not.[59]

E. Engineering Constraints

Routes 179-C and 179 are almost identical with regard to engineering constraints with no meaningful differences, and this category should not be used to differentiate between the two routes.[60] According to John Poole, "there are no specific engineering constraints that are not present in a usual transmission line project and … all of the possible constraints can be adequately addressed by using design and construction practices and techniques that are usual and customary in the electric utility industry."[61]

F. Costs and Length

Costs and length are two of the four key factors focused on by all of the routing experts in this case and both factors heavily favor Route 179-C. With regard to these factors, Route 179-C is clearly significantly superior to Route 179. Route 179-C offers a cost savings of $2,464,000 over

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[56] Oncor Ex. 1, Page 209.
[57] Staff Ex. 1, Page 35.
[58] *See* Oncor Ex. 25.
[59] *See* Staff Ex. 1, Page 17-18; Watkins Ex. 5, Page 5; Oncor Ex. 4, Page 9.
[60] *See* Oncor Ex. 25.
[61] Staff Ex. 1, Pages 38-39.

Route 179 and is 4,525 feet (0.86 mile) shorter than Route 179.[62] In addition, these substantial improvements offered by Route 179-C do not come at any significant cost to any other important routing criteria.[63]

G. Paralleling

Paralleling compatible corridors is another of the four key factors focused on by multiple routing experts in this case and this important factor supports Route 179-C. Route 179-C is slightly superior to Route 179 in terms of total paralleling and should be recommended by the ALJs. Route 179-C parallels or utilizes existing compatible ROW and apparent property boundaries for 23.25% of its length, while Route 179 only parallels or utilizes existing compatible ROW and apparent property boundaries for 22.68% of its length.[64] Again, paralleling is one of the four factors determined to be key factors by multiple routing experts in this case, and route 179-C is slightly superior with regard to this factor.

H. Prudent Avoidance

Route 179-C comports with the Commission's policy on prudent avoidance because it minimizes, to the extent reasonable, the number of habitable structures located in close proximity to the proposed transmission line. Prudent avoidance is defined in 16 TAC §25.101(a)(6) as: "The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort." In practice, the Commission identifies "habitable structures"[65] that are within 500 feet of the transmission line. Of the 74 routes identified in the EA and Route

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[62] Watkins Ex. 11; *See* Oncor Ex. 25.
[63] *See* Oncor Ex. 25.
[64] *See Id.*
[65] PUC SUBST. R. 25.101(b)(3)(B); PUC SUBST. R. 25.101(a)(3); "Habitable Structures" is defined as "structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools."

179-C, the total number of habitable structures within 500 feet of the centerline ranges from 93 to 400.[66]

Route 179-C has 98 habitable structures within 500 feet of its centerline, which is tied for 4th least of any route, and only one more than Route 179.[67] Given the difference of only one habitable structure between Routes 179-C and 179 and the cost difference of $2,464,000 between the two routes, spending an additional $2,464,000 to avoid a single habitable structure (a single family residence) is not a reasonable investment of money.[68] Because there is only a very small difference in this category between Route 179-C and Route 179 (1 habitable structure), the strong performance of Route 179-C in this category when compared to all other proposed routes, and the superior performance of Route 179-C in all of the other key routing criteria when compared directly to Route 179, the ALJs should recommend Route 179-C over Route 179.

III. CONCLUSION

In conclusion, the ALJs should issue a PFD recommending the PUC approve Route 179-C. Testimony from the key routing experts has identified 4 key factors in this case (cost, length, habitable structures and paralleling) and Route 179-C significantly outperforms Route 179 when these 4 key factors are considered together. Routes 179-C and 179 both utilize the same links in the eastern and central study areas and are overall similar routes with regard to many routing criteria. However, Route 179-C offers compelling advantages over Route 179 when the 4 key

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[66] *See* Staff Ex. 1, Pages 49-51.
[67] Staff Ex. 1, Pages 49,51.
[68] In PUC Docket 51023, consideration was given to routes based on habitable structure count while taking into account additional costs of avoiding those structures with other routes. The Final Order issued in that docket included Finding of Fact 129, which stated that: "Route R1 has 19 fewer habitable structures within 300 feet of its centerline than does Z2. Route R1 costs $5.88 million more than route Z2. Each of the 19 additional structures avoided by route R1 is avoided at an average cost of $309,000 per structure." The PUC still selected Z2, with its higher habitable structure count but with lower cost. In Watkins' opinion, that means it was not prudent to spend $309,000 per structure to avoid 19 additional habitable structures in that docket, much less an additional $2,464,000 to avoid only one additional habitable structure in this docket.

factors are considered and Route 179-C enjoys the support or non-opposition of almost every party to the case. This is why the PUC Staff got it right when they endorsed Route 179-C as the "best meets" route and why the ALJs should issue a PFD recommending the PUC approve Route 179-C as the route that best addresses PURA §37.056(c)(4) and PUC Substantive Rule 25.101(b)(3)(B).

WHEREFORE, Watkins requests that the ALJs, having heard the evidence and considered the parties' briefs, approve the Joint Applicants' Application and issue a PFD recommending Route 179-C as the final route for Commission approval.

Respectfully Submitted,

MORGAN WILLIAMSON LLP
701 South Taylor, Suite 440
Amarillo, Texas 79101
Telephone: (806) 358-8116
Facsimile: (806) 350-7642

By: _____
Tyler Topper
Texas Bar No. 24059263
ttopper@mw-law.com
Christian Stewart
Texas Bar No. 24013569
cstewart@mw-law.com

ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

I certify a copy of this document is being filed in the Public Utility Commission's Interchange System and served on all parties of record as required by orders in this docket, the Commission's rules, and the Commission's First and Second Orders Suspending Rules issued on March 16, 2020 and July 16, 2020, in Project No. 50664.

J. Tyler Topper