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**SOAH DOCKET NO. 473-23-21216  
PUC DOCKET NO. 55067**

<b>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</b>	§ § § § § § § § §	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**HILLWOOD PARTIES’ INITIAL POST-HEARING BRIEF**

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

**HILLWOOD PARTIES’ INITIAL POST-HEARING BRIEF**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:**

Pursuant to SOAH Order No. 2 issued in this docket, Eagle Income Properties, LP, AIL Investment, L.P., Petrus Investment, L.P., HW Indian Springs, L.P., HWC Justin 407, LLC, HP Gibbs, LP, Pecan Square Phase 1, LLC, Pecan Square Phase 2A, LLC, Pecan Square Phase 2B, LLC, Pecan Square Phase 3A, LLC, and Pecan Square Phase 3B, LLC (collectively, “Hillwood” or “the Hillwood Parties”) file this Initial Post-Hearing Brief, respectfully showing as follows:

**I. INTRODUCTION**

On June 8, 2023, Oncor Electric Delivery Company LLC (Oncor) filed its application in this docket for an amendment to its certificate of convenience and necessity (CCN) to construct and operate the proposed Ramhorn-Hill to Dunham double-circuit 345-kV transmission line in Denton and Wise Counties, Texas (Project). The Hillwood Parties have a justiciable interest in this Project because certain proposed routes cross or otherwise directly affect the Hillwood Parties’ property and were admitted as a party to this docket by SOAH Order No. 5<sup>1</sup>.

**II. SUMMARY OF POSITION**

The only real issue in this application for an amendment to Oncor’s Certificate of Convenience and Necessity (“CCN”) is what route best satisfies the criteria set forth in the Public

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<sup>1</sup> SOAH Order No. 5 (July 25, 2023).

Utility Regulatory Act (“PURA”)<sup>2</sup> and the Substantive Rules of the Public Utility Commission (“PUC” or “Commission”)<sup>3</sup>.

The Hillwood Parties have clearly supported Route 179 as the best-meets route from the outset of this proceeding. The Hillwood Parties continue to endorse and support Route 179. However, during the course of the Hearing on the Merits a broad—if not quite unanimous—consensus of support emerged around two relatively minor adjustments to Route 179. Route 179C was proposed by Commission Staff and by Edgar Brent Watkins and Mary Ann Livengood. This proposal adjusts the Western portion of the proposed line in the use of segments leading into the connection to the Ramhorn substation. La Estancia proposed two alternative adjustments in the Eastern section of the proposed line.<sup>4</sup> Each of those variations on Route 179 are reasonable adjustments to Route 179, and are supported by the record as well as the vast majority of the intervenors in this proceeding.

### **III. PRELIMINARY ORDER ISSUES**

The Hillwood Parties’ Initial Post-Hearing Brief will not address the following issues from the Preliminary Order:<sup>5</sup> Application, Notice, Public Input, Need, Best Management Practices, Permits, Coastal Management Program, or Limitation of Authority. This brief will address Route Selection, Cost, the recommendation of the Texas Parks and Wildlife Department and selected other matters.

#### **A. Route**

The Hillwood Parties address the following issues from the Preliminary Order related to the route. However, the Hillwood Parties view these questions as interconnected, and thus we address the questions jointly.

8. 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?

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<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE §§ 11.001-66.016.

<sup>3</sup> 16 TAC Chapter 25.

<sup>4</sup> See Oncor Exhibit No. 25.

<sup>5</sup> See Preliminary Order (June 9, 2023).

9. 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?

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

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

Consistent with the organization of the hearing on the merits in this proceeding that occurred August 28, 2023 through August 30, 2023, the Hillwood Parties organize their comments on issues related to the proposed route in three geographic segments: East (from the Dunham Switch to I-35W), Central (from I-35W to the intersection of Segments K1 and L5) and West (from Segment L5 to the Ramhorn Hill Switch).

### **East**

The Hillwood Parties support Route 179C with La Estancia Alternatives 1 and 2. Assuming the continued support of the directly impacted parties, the proposed alternative link connecting Segment C21 to Segment C3 (La Estancia Alternative 1) represents a helpful concession on the part of some parties, as employing it will avoid several segments that would impact a larger number of habitable structures—mostly currently occupied homes. In fact, Route 179C with La Estancia Alternatives 1 & 2 parallels (i) approximately 2,800 more feet of existing public roads and highways, (ii) more than 6,000 additional feet of pipelines, and (iii) 500 more feet of apparent property boundaries.<sup>6</sup> These changes are consistent with the factors in the PUC's substantive rules.<sup>7</sup> The Hillwood Parties do not oppose La Estancia Alternative 2, which would push Segment E6 closer to the FM 1179 right of way.

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<sup>6</sup> Oncor Exhibit 25.

<sup>7</sup> 16 TAC §25.101(b)(3)(B)(i)-(iii).

Route 179C with La Estancia Alternatives 1 & 2 also aligns with the guidance from prior Commission decisions regarding the appropriate consideration to be given to future development. In Oncor witness Brenda Perkins’ rebuttal testimony, she noted that “the Commission has historically been reluctant to consider future development and has not granted proposed future development the same weight as existing constraints.”<sup>8</sup> However, a more precise restatement of the Commission’s view of the weight to be afforded future development is that the Commission has been “reluctant to consider *hypothetical* future development in making” CCN routing determinations.<sup>9</sup> The Commission’s focus on “hypothetical future development” is a critical contextual factor in fully understanding the appropriate assessment of future development in routing decisions. As discussed in L. Russell Laughlin’s cross-rebuttal testimony, the development underway on the Hillwood properties is far from hypothetical. For example, Hillwood Parties have a fully zoned and entitled site plan in place for its Northlake 1171 property—reaching this milestone entails significant engineering analysis, legal work and resource investment by a developer.<sup>10</sup> A development at this stage is not hypothetical. Therefore, choosing Route 179, 179C, or 179C with La Estancia Alternatives 1 & 2 accords with the Commission’s previous approach: future development that is more than hypothetical should be given its due weight in making routing decisions.

Consistent with the direct testimony of L. Russell Laughlin on behalf of the Hillwood Parties, the Hillwood Parties continue to oppose any proposed route that employs Segments C8, C9, E5, E8, F1, F2, F3, F4, F5, F6, F7, F8 or G5.

### **Central**

In the Central portion of the study area, the Hillwood Parties support Route 179 as filed, which is comprised of G3-H41-H42-H8-18-J3-K1-L5. The Hillwood Parties accept Segments H8 and 18 that will impact the Hillwood Speedway North property. The Hillwood Parties continue to

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<sup>8</sup> Oncor Exhibit 13, p.8.

<sup>9</sup> Order on Rehearing, Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for the Round Rock - Leander 138-kV Transmission Line in Williamson County (July 23, 2017), Hillwood Exhibit 4, pp. 7-8 (emphasis added). Ms. Perkins acknowledged on cross-examination that the Order to which she referred in her pre-filed Rebuttal testimony indeed included the more restrictive language. *See* Hearing on the Merits Transcript, August 29, 2023, p. 57.

<sup>10</sup> Hillwood Exhibit 2, pp. 4-5. The Hillwood Parties’ site plan for the Northlake 1171 property is attached as Exhibit LRL-CR1 to Mr. Laughlin’s cross-rebuttal testimony.

oppose all other segments that would impact its Speedway North property—especially the segments that affect the operational flight test center located there. These include I4, I5, I6, I11, I12, I31, I32, J1, and J21.

Some parties have advocated for avoiding Segment J3 by moving the route further south. These proposed modifications generally follow Route 179, but after Segment H8, these proposed modifications would use I6-J1-J21-J22-L1, before rejoining Route 179 or 179C. Absent modifications to Segments I6-J1-J21, this route would materially impair the Hillwood Parties flight test center by precluding many of the current, cutting-edge testing activities taking place there.<sup>11</sup> In his direct testimony, Mr. Laughlin noted that, with certain modifications to the segments, the Hillwood Parties could support the use of Segments I6, J1 and J21. However, after the conclusion of discovery and a three-day hearing on the merits, there is no evidence in the record suggesting that Oncor would be able to make the adjustments to those segments that would allow the Hillwood Parties to support a route using them. Therefore, the Hillwood Parties remain fully opposed to any route including I6, J1, or J21.

Further, use of I6, J1, or J21 would require use of Segment J22. The record evidence shows that J22 is an inferior alternative to Segment J3 which is used in each of Route 179, 179C and Route 179C with La Estancia's modifications. As confirmed by Oncor witness Brenda Perkins, any route using Segments I6, J1, or J21 would be required to then use Segment J22.<sup>12</sup> Segment J22 impacts 128 habitable structures, which is more than double the number impacted by J3. Moreover, the type of impact it causes to many homes is much more acute than the impacts of other segments on habitable structures. Segment J22 would cross tracts 1653 through 1671 and come within approximately 100 feet of the habitable structure located on each tract (habitable structures 482-500).<sup>13</sup> When asked whether there are other segments that would place the transmission line on landowners' property that close to their homes, after considering for a few moments, Ms. Perkins replied, "I would say probably not."<sup>14</sup>

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<sup>11</sup> For a full discussion of the activities currently underway at the Hillwood Parties flight test center, see the Direct Testimony of L. Russell Laughlin on behalf of the Hillwood Parties at 7-8 (July 31, 2023).

<sup>12</sup> See Hearing on the Merits Transcript, Aug. 28, 2023, p. 120.

<sup>13</sup> See Hillwood Exhibit 3, p. 2; EA, Table 7-4, p. 11 (Oncor Exhibit 1, p. 585).

<sup>14</sup> See Hearing on the Merits Transcript, Aug. 28, 2023, p. 123-24.

Oncor will be limited in its ability to mitigate the impacts of Segment J22. During the hearing on the merits, Oncor Witness Russell Marusak confirmed that tracts 1653-1671 along Segment J22 were significantly impacted by the 100-foot right of way because of the presence of the railroad right of way along the southern border of those properties; the Oncor easement must be offset from the railroad easement.<sup>15</sup> Oncor witness Amy Zapletal further confirmed that Oncor is unable to construct any transmission facilities within the railroad’s easement without the railroad’s consent.<sup>16</sup> Nothing in the record suggests the railroad would provide such consent. If the Commission were to approve a route employing Segments I6-J1-J21, it would of necessity be approving a route employing Segment J22. Segment J22 impacts more habitable structures (128)<sup>17</sup> than all of Route 179 as filed (97).<sup>18</sup> Moreover, such a route would, at best, materially impair an important and currently operational flight test center. But, more likely, it would completely shutter the flight test center’s current operations.<sup>19</sup> Impacts to homes and businesses like these are completely inappropriate when considering the other, less burdensome, routing options.

Other routing considerations favor routes that use Segment J3 over routes that use Segment J22. During cross examination of the Oncor witnesses’ rebuttal testimony, Russell Marusak discussed the challenges associated with routing the transmission line through the central portion of the study area.<sup>20</sup> Mr. Marusak explained that, consistent with applicable law, the utility must provide a geographically diverse set of routing options, but the viability of a particular segment is heavily influenced by the viability of surrounding segments—every segment must connect to other segments. Mr. Marusak noted that, in crossing the central portion of the study area, the choices came down to Segment J4 along Trail Creek, Segment J3 along the floodplain or the more southern segments (such as J22), which Mr. Marusak characterized as “very tied into people’s backyards.”<sup>21</sup> Mr. Marusak made the point that the central area of the study map is very crowded, but using J3

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<sup>15</sup> Hearing on the Merits Transcript, Aug. 28, 2023, p. 192-93.

<sup>16</sup> *Id.* at 193.

<sup>17</sup> EA, Table 7-3, p.4 (Oncor Exhibit 1, p. 568).

<sup>18</sup> EA, Att. 7, part 4, p.8 (Oncor Exhibit 1, p. 710); *see also* Hearing on the Merits Transcript, Aug. 28, 2023, p. 120.

<sup>19</sup> *See* Hillwood Exhibit 1, p. 8.

<sup>20</sup> *See* Hearing on the Merits Transcript, Aug. 29, 2023, pp. 92-95.

<sup>21</sup> *Id.* at 94.

is less disruptive than the alternatives. As Mr. Marusak succinctly stated: “We could not find an alternative that we felt provided us any advantage over, you know, going through the floodplain area.”<sup>22</sup> Therefore, the Hillwood Parties believe that Route 179, 179C, or 179C with the La Estancia modifications, best balance the varied routing factors. Therefore, the Commission should approve Route 179 or 179C (including the La Estancia Alternatives).

### **West**

All of the proposed routes discussed among the parties at the hearing on the merits, including Route 179, 179C and 179C with the La Estancia Alternatives, employ Segments K1-L5-L4, which are segments contained in Route 179 as filed. The Hillwood Parties accept these segments which directly impact the Hillwood Treeline property. The Hillwood Parties look forward to working with Oncor to ensure the portions of those segments on Hillwood Parties’ property “parallel or utilize existing compatible rights of way”<sup>23</sup> and as closely as possible “parallel property lines”<sup>24</sup> of the Treeline development.

### **B. Cost to Consumers**

The cost of Route 179 and its proposed variants<sup>25</sup> are reasonable. No witness challenged the cost of the proposed line. The estimated costs of the four primary routes under consideration at this time—Route 179, 179C, 179C with La Estancia Alternative 1, and 179C with La Estancia Alternatives 1 & 2 are roughly similar. The total cost of each of those routes (including the substation facilities) are \$253.6 million, \$251.1 million, \$251.4 million and \$250.7 million, respectively.<sup>26</sup> That is a total difference of less than 1% across all alternatives. Moreover, these four proposed routes all rank around the middle of the pack when considering all routes proposed in Oncor’s application. The Hillwood Parties do not believe that any of the proposed routes can be materially distinguished on the basis of Cost to Consumers. Therefore, any of the four should be acceptable the Commission on this basis.

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<sup>22</sup> *Id.* at 95.

<sup>23</sup> See 16 TAC § 25.101(b)(3)(B)(ii).

<sup>24</sup> See 16 TAC § 25.101(b)(3)(B)(iii).

<sup>25</sup> The variants include Routes 179C, 179C with La Estancia Alternative 1, and 179C with La Estancia Alternatives 1 & 2.

<sup>26</sup> See Oncor Exhibit 25.

### C. Texas Parks and Wildlife Department

Consistent with its statutory authority<sup>27</sup>, the Texas Parks and Wildlife Department (“TPW”) filed comments on the proposed transmission project on July 19, 2023. TPW suggests Route 137 is most consistent with the standards which TPW is charged to review.

However, TPW’s comments are specifically limited to the matters expressly authorized by the Texas Parks and Wildlife Code.<sup>28</sup> The PUC, on the other hand, has been instructed by the Legislature to make the final administrative decision regarding transmission line routing based upon consideration of all of the factors listed in PURA and in the Commission’s substantive rules adopted pursuant to PURA.<sup>29</sup> TPW’s comments are helpful for the purposes for which the comments are offered, but TPW’s analysis is never regarded as, or intended to be, dispositive on routing questions before the Commission in this case.

With that clarification, TPW’s analysis shows that Route 179 compares favorably to most routes when considering the TPW factors. TPW contends that Segments G2, G6 and H6 are some of the worst segments when considering its statutory factors. None of those segments are used in Route 179. TPW further states that “Route 137 and Route 179 ranked very similarly and generally exhibited shorter lengths across natural resource criteria than other routes using Links G6 or H41.”<sup>30</sup> In fact, TPW points out that of those routes, Route 137 (18,795 feet) and Route 179 (18,992 feet) cross the least amount of upland woodland, riparian areas, potential wetlands or lakes and ponds. For a route that is approximately 21 miles, that is a difference of less than 200 feet of potential wildlife disturbance on Route 137 (TPW’s preferred route) than Route 179 (the best-meets route). Further, TPW concedes that Route 137 crosses more than 500 feet of the Canyon Falls Club recreational area,<sup>31</sup> which would impact many residents of the area, including many intervenors in this proceeding. The Hillwood Parties support the proposed alternative routing that avoids the Canyon Falls development.

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<sup>27</sup> TEX. PARKS & WILD. CODE, §§ 12.0011(b)(2)-(3); 12.0011(c).

<sup>28</sup> TEX. PARKS & WILD. CODE, § 12.0011(b).

<sup>29</sup> TEX. UTIL. CODE, § 35.056; 16 TAC, § 25.101(b).

<sup>30</sup> Comments of Texas Parks and Wildlife, p. 6 (July 19, 2023).

<sup>31</sup> *Id.*

For these reasons, the Hillwood Parties believe that TPW's comments do not disfavor the selection of Route 179 or its variations.<sup>32</sup> Route 179 scores favorably on TPW's metrics compared to all other routes.

#### **D. Other Issues**

1. Interconnection to Generation: There is no evidence in the record that would suggest that anything would occur during the construction of Route 179 that would preclude or limit a generator from generating or delivering power, or that would adversely affect the reliability of the ERCOT system. On the contrary, the completion of Route 179 or its variants will provide significant reliability benefits to the Alliance region and to the entire ERCOT region.

2. Notice: Regarding La Estancia Alternatives 1 & 2, it appears that Oncor will not have any additional notice requirements under 16 TAC § 22.52(a)(2) and (a)(3)(C).<sup>33</sup> Moreover, it appears from the testimony at the hearing on the merits that the only landowners that will be directly affected by alternative 1 will be La Estancia—the very party that proposed the change. Similarly, during the discussions at the hearing regarding La Estancia Alternative 2, the parties recognized that those proposed modification cannot be made without the consent of all affected parties.

Overall, it does not appear that there are any other issues that would negatively impact the ability of the Commission to select, or Oncor to construct, Route 179 or its variants.

### **IV. CONCLUSION**

The Hillwood Parties respectfully request that Your Honors and the Commission select one of (a) Route 179, (b) Route 179C, (c) Route 179C with La Estancia Alternatives 1, 2 or both and approve the application subject to the conditions identified herein.

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<sup>32</sup> Routes 179C, 179C with La Estancia Alternative 1, and 179C with La Estancia Alternatives 1 & 2.

<sup>33</sup> See Hearing on the Merits Transcript, Aug. 28, 2023, p. 125 (Ms. Perkins: “So for the Commission to consider that modification, all parties would need to have been noticed of this procedure. And from looking at the map, I believe that to be the case.”).

**Respectfully submitted,**

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**ATTORNEYS FOR HILLWOOD PARTIES**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served by electronic mail, on all parties of record in this proceeding on September 7, 2023, in accordance with SOAH Order No. 1 in the above-styled proceeding and the Commission's Second Order Suspending Rules, issued in Project No. 50664.

  
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Lynn Needles