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

**THE CITY OF JUSTIN'S  
REPLY BRIEF**

**SEPTEMBER 14, 2023**

**THE CITY OF JUSTIN'S  
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**THE CITY OF JUSTIN’S REPLY BRIEF**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES (ALJs), STATE OFFICE  
OF ADMINISTRATIVE HEARINGS (SOAH):

COMES NOW, the City of Justin (Justin or City) and files this Reply Brief in the above-styled and numbered docket. Pursuant to SOAH Order No. 2, this brief is timely filed.<sup>1</sup> In support thereof, Justin shows the following:

**I. INTRODUCTION**

Twenty nine parties filed initial briefs in this proceeding. Sixteen of those parties are located in the central division of the study area and/or discuss issues pertinent to those links in the central division. Of these sixteen parties, thirteen expressed opposition to the use of Link J3 and two were silent regarding the use of Link J3. Conversely, only one party, Hillwood Parties (Hillwood), filed in direct support of using Link J3. Hillwood further expressed their opposition to the use of Link J22. The use of Link J22 was supported and/or proposed by nine parties.

The importance of this breakdown is that while many parties in this proceeding, including a real estate development company, property owners, and residents, show their strong opposition to routes that use Links J3, only one party participating in this matter affirmatively opposes Link J22. Many of the parties that oppose the use of Link J3 suggest and/or state their support for using Link J22 as an alternative. Additionally, it is worth noting that no party suggested the use of Link J4, and five parties opposed Link J4. In addition to the arguments made by parties who oppose Link J4, the lack of support for the use of Link J4 further shows that Link J4 is not a route that should be considered by the Public Utility Commission of Texas (Commission). In addition to the

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<sup>1</sup> SOAH Order No. 2 – Memorializing Prehearing Conference; Finding Notice and Application Sufficient; Adopting Procedural Schedule; Setting Hearing on the Merits (Jun. 28, 2023).

arguments addressed below, Justin re-urges the points raised in its Initial Brief and respectfully requests that Your Honors issue a Proposal for Decision (PFD) that does not recommend routes that include Links J3 and J4 and instead recommend the use of Link J22.

## **II. ARGUMENT**

### **A. A Modified Route 179 or a route that uses Link J22 instead of Links J3 or J4 should be adopted.**

As addressed in Justin's Initial Brief, a modified version of Route 179 (Modified Route 179) that would use Link J22 instead of Link J3 should be recommended by the ALJs.<sup>2</sup> The arguments addressed in Justin's Initial Brief, as well as the clear opposition of the majority of intervenors in the central division, should be taken into consideration with the arguments below when deciding on a best meets route.

In Hillwood's Initial Brief, specifically the section examining Link J22, Hillwood states "[w]hen 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>3</sup> This question was asked by Hillwood when a map was not displayed showing all segments along the whole study area.<sup>4</sup> If Ms. Perkins had viewed all segments of the map, she would have been able to identify multiple segments on the map where the transmission line would come closer to homes. Two examples are on Links J3 and J4. The centerline of Link J3 as proposed runs as close as sixty five feet to some habitable structures,<sup>5</sup> and the centerline of Link J4 runs as little as fifty eight feet away.<sup>6</sup> Not a single habitable structure listed in the table provided by Oncor Electric Delivery Company LLC (Oncor) showing habitable structures within 500 feet of the filed alternative routes is as close to, or closer, than the closest habitable structures on Links J3 and J4.<sup>7</sup> Oncor Witness Russel Marusak confirmed during cross-examination the habitable structure on Link J4 is the closest habitable structure to the centerline

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<sup>2</sup> The City of Justin's Initial Brief at 9-10 (Sep. 7, 2023) (Justin's Initial Brief).

<sup>3</sup> Hillwood Parties' Initial Post-Hearing Brief at 6 (Sept. 7, 2023) citing Tr. at 123-24 (Perkins Cross) (Aug. 28, 2023).

<sup>4</sup> Tr. at 123 (Perkins Cross) (Aug. 28, 2023).

<sup>5</sup> 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, Oncor Ex. No. 1 at Bates 868-69.

<sup>6</sup> *Id.* at Bates 865-67.

<sup>7</sup> *Id.* at Bates 869-72.

of the transmission line.<sup>8</sup> Additionally, most of the habitable structures along Link J22 are well beyond 100 feet away from the transmission line.<sup>9</sup>

The amount and proximity of habitable structures are not only a factor that the Commission substantive rules require,<sup>10</sup> but one that is of great concern to the public. During public meetings held by Oncor regarding the transmission line, attendees were given questionnaires ranking factors concerning the Project routing.<sup>11</sup> Based on the responses received, there was a strong preference for maximizing the distance of the Project from habitable structures.<sup>12</sup> Due to the close proximity of habitable structures along Links J3 and J4, if the ALJs were to recommend routes that use Links J3 and J4 to the Commission, the recommendation would go against the Commission substantive rules as well as the preferences of the public.

Although the application shows that Link J22 has more habitable structures within 500 feet from the transmission line, the application does not accurately reflect the entire number of habitable structures that will be affected when the transmission line is built. As discussed in Justin's Initial Brief, Oncor directed Halff Associates, Inc. (Halff) to count multifamily habitable structures as one habitable structure despite the fact that multiple residential units may be inside the structure.<sup>13</sup> This method does not consider the total number of residences that are equally affected as residents in single family homes. In implementing this method, Halff counted Bishop Gardens Apartment Complex buildings as seven structures, when in fact each structure contains multiple residential units. If Halff had counted each unit as a unique habitable structure, this would increase the total amount of habitable structures effected by Link J4. Further, as TCCI Range-Mead 2021 LLC (TCCI) points out, Oncor's application does not consider the future increase in habitable structures within 500 feet due to ongoing and planned development.<sup>14</sup> TCCI is a real estate development company that is in the process of developing a residential development on a

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<sup>8</sup> Tr. at 175 (Aug. 28, 2023).

<sup>9</sup> Oncor Ex. No. 1 at Bates 869-72.

<sup>10</sup> 16 Tex. Admin. Code § 25.101.

<sup>11</sup> Oncor Electric Delivery Company LLC's (Oncor) Initial Post-Hearing Brief at 12 (Sept. 7, 2023) (Oncor's Initial Brief).

<sup>12</sup> Oncor's Initial Brief at 12-13.

<sup>13</sup> Justin's Initial Brief at 11.

<sup>14</sup> TCCI Range – Mead LLC's (TCCI) Initial Brief at 2 (Sep. 7, 2023) (TCCI's Brief).

tract of land located near the City.<sup>15</sup> Taking both future and ongoing development and multifamily residences into consideration results in an increased amount of habitable structures that are impacted by Links J3 and J4.

Further, utilizing rights-of-way that have already been cleared rather than areas that are in a natural state, such as woodlands and rangeland pastures, would save on clearing costs as well as preserve the environmental integrity of the land. In its Initial Brief, TCCI shows that Link J22 and Link L1 parallel or utilize significant distances of railroad right-of-way and creek bed or floodplain.<sup>16</sup> In contrast, Link J3 does not utilize similar rights-of-way and instead crosses more woodlands and goes between Catherine Branch Creek and property boundaries. This not only causes safety and aesthetic concerns to residents living in those habitable structures, but also diminishes the natural aesthetic and community enjoyment of Catherine Branch Creek.

Justin urges the ALJs to recommend Modified Route 179 that uses Link J22 instead of J3 or J4 due to the close proximity of the transmission line to habitable structures along the route, the increasing number of habitable structures that would be affected, and the detrimental effect on the environmental integrity of the City and surrounding areas if Links J3 or J4 are used.

**B. The use of Links J3 or J4 would directly oppose the community value factor the Public Utility Regulatory Act requires the Commission take into consideration when approving a utility's proposed transmission line.**

When determining whether to approve a utility's proposed transmission line, the Public Utility Regulatory Act (PURA) requires the Commission take multiple factors into consideration including community values. Oncor incorrectly claims that Route 179 does not significantly impact community values.<sup>17</sup> Commission Staff (Staff) states a proper interpretation of the term community values as "a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community,"<sup>18</sup> and "may include landowner concerns and opposition."<sup>19</sup>

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<sup>15</sup> Direct Testimony of Tommy Cansler, TCCI Ex. 1 at 2-3.

<sup>16</sup> TCCI's Initial Brief at 3.

<sup>17</sup> Oncor's Initial Brief at 21.

<sup>18</sup> See Commission Staff's Initial Brief at 6 (Sept. 7, 2023) citing *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for 138-kV Transmission Line in Kerr County*, Docket No. 33844, Final Order, Finding of Fact No. 65 (Mar. 4, 2008).

<sup>19</sup> *Id.* citing *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, San Saba, Burnet, and Lampasas*

Staff uses this definition to justify the argument that Route 179-C, a modified Route 179 that still uses Link J3, performs well with regard to community values.<sup>20</sup> In making their recommendations for best meets route, Staff and Oncor failed to take into consideration those who have participated, and currently are participating in this matter. Approximately 100 protests and 55 motions to intervene were filed by residents of Justin.<sup>21</sup> As stated in the testimony of James Clark, Mayor of Justin, the City experienced its highest attended Town Hall meeting when the Oncor project was discussed.<sup>22</sup> Further, multiple residents intervened, took part in the hearing on the merits, and filed initial briefs expressing their concerns with, and opposition to, Route 179, Link J3, and Link J4. No other affected city in this matter has had such continued support throughout the process. Under Staff's interpretation of community values, the participation of Justin residents speaks directly to the community values of the City which would be negatively impacted by Route 179 and any other routes using Links J3 and J4.

Further, Links J3 and J4 affect areas that enrich the community value of Justin. According to Staff's interpretation, a "shared appreciation of an area or other natural or human resource by members of a national, regional, or local community" is a community value. The Justin community greatly values and appreciates the natural areas throughout the City, including but not limited to, Catherine Branch Creek, Trail Creek, Bishop Park, and the retention ponds near the creeks. This appreciation is shown by the strong opposition of Links J3 and J4 which affect some of these areas. Link J3 traverses through the Justin crossing over Catherine Branch Creek multiple times, as well as the retention pond maintained by the City.<sup>23</sup> Both of these features are appreciated by the residents of Justin. Community members use the retention pond for fishing and bird watching,<sup>24</sup> and many families enjoy the natural aesthetic Catherine Branch Creek provides to the backyards of their homes.

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*Counties, Texas*, Docket 37448, Proposal for Decision at 14 (Mar. 18, 2010).

<sup>20</sup> *Id.*

<sup>21</sup> Justin's Initial Brief at 3.

<sup>22</sup> Direct Testimony of James Clark, Justin Ex. 1 at Bates 15.

<sup>23</sup> Justin's Initial Brief at 7-8.

<sup>24</sup> *Id.* at 8.



Moreover, Link J4 crosses over Trail Creek, a retention pond maintained by the City, and near Justin Town Square and multiple parks.<sup>25</sup> These features are also appreciated by Justin's residents, and the City has spent money developing these areas to bring the community together. The City has spent about \$100,000 on a Veterans Memorial in Bishop Park, built stairs that descend to Trail Creek, and began construction on a bridge that connects Justin Community Park and Reatta Ridge.<sup>26</sup> Although Oncor tries to argue that transmission line rights-of-way and park land routinely co-exist,<sup>27</sup> the pictures provided by Ms. Perkins show hike and bike trails under transmission lines with a lack of trees and vegetation on the right-of-way.<sup>28</sup> These pictures are in stark contrast to the densely wooded areas that Link J4 would disrupt. The natural areas that would be crossed by the transmission line would diminish the community values that are tied to these features harming the whole community. The extensive participation of Justin residents, and Links J3 and J4 crossing natural areas appreciated by the community, make it clear that Links J3 and J4 would negatively impact the City's community values. The ALJs should take the City's community values and the effect the route has on these community values into consideration when recommending a route for the Commission to approve.

**C. Multiple intervenors demonstrate that the selection of a route using Links J3 or J4 would be detrimental to the value and development of such area.**

Hillwood makes note of Russell Marusak's explanation of challenges faced in routing the transmission line.<sup>29</sup> In his explanation, Mr. Marusak states the "viability of a particular segment is heavily influenced by the viability of surrounding segments – every segment must connect to other segments."<sup>30</sup> The City agrees with Mr. Marusak's position. In fact, Mr. Marusak's statement reinforces why Route 179, or any route using Links J3 or J4, and surrounding links should not be considered as viable routes.

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<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 12-13.

<sup>27</sup> Oncor's Initial Brief at 30.

<sup>28</sup> Rebuttal Testimony and Exhibits of Brenda J. Perkins, Oncor Ex. No. 13 at 11-17.

<sup>29</sup> Hillwood's Initial Brief at 7.

<sup>30</sup> *Id.*

Along with the Justin, intervening parties Dudley Realty, LLC (Dudley) and TCCI express their concerns with routes that use Link J3 and the links that surround Link J3.<sup>31</sup> TCCI not only opposes Link J3, but also Link K1 which bisects TCCI's property disrupting the development of the ongoing and planned residential developments.<sup>32</sup> Dudley's property is located on the eastern side of Justin.<sup>33</sup> Dudley opposes Links I7, I8, and J3 that directly affect its property.<sup>34</sup> In Dudley's initial brief, it states that if these links are used, the line would be detrimental to Dudley's property values and opportunities for development.<sup>35</sup>

The City is growing exponentially; its population is expected to be 9,327 by 2027, or a 33% increase.<sup>36</sup> It is critical that the City as well as surrounding areas that include TCCI and Dudley properties are able to continue to develop in order to support such growth. A transmission line bisecting properties that are already platted for development, have development plans in place, or were bought for future residential developments would greatly affect the actual development of the properties as well as the value of these properties. As indicated in Mayor Clark's testimony, comparable home sales in other areas near Justin revealed a 3% to 5% negative impact on home values which is shown in these assessments as well as in the sale prices of the homes.<sup>37</sup> Such a negative impact on property values would not only affect the homeowners and developments, but the community as well; 85% of the City's operating budget comes from property taxes.<sup>38</sup> This budget is used to provide city services such as the hiring of firefighters and law enforcement personnel that are needed to provide safety for the growing community.<sup>39</sup>

As indicated by Hillwood and Mr. Marusak, every segment is connected to other segments and the viability of one segment is heavily influenced by surrounding segments. Based on this, when viewing the viability of Link J3, it is important to not only focus on Link J3, but the links

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<sup>31</sup> Dudley Realty, LLC's Initial Brief at 2 (Sept. 7, 2023) (Dudley's Initial Brief); TCCI's Initial Brief at 1.

<sup>32</sup> TCCI's Initial Brief at 3-4; *see also* Intervenor Map – Figure 1-1B, Oncor Ex. No. 17.

<sup>33</sup> Testimony of Scott Dudley on Behalf of Dudley Realty, LLC, Dudley Realty Ex. 1 at 2-3.

<sup>34</sup> Dudley's Initial Brief at 3-4.

<sup>35</sup> *Id.* at 2.

<sup>36</sup> Justin's Initial Brief at 2.

<sup>37</sup> Justin Ex. 1 at Bates 15-16.

<sup>38</sup> *Id.* at Bates 16.

<sup>39</sup> *Id.*

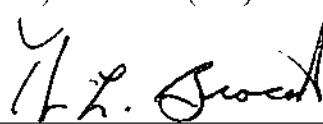
that surround it, including Links I7, I8, and K1. These links are opposed by parties in this proceeding who assert that the proposed transmission lines would result in detriment to their property and planned development. Therefore, in addition to the arguments specific to Link J3, arguments regarding surrounding links should also be taken into consideration when determining the viability of using Link J3.

For these reasons, the City of Justin urges the ALJs to evaluate the effect of a transmission line on the area and development of the area crossed by Link J3, including the effect of those links surrounding Link J3 which are also opposed to by parties in this matter.

### **III. CONCLUSION**

For the reasons discussed in this brief and the City of Justin's Initial Brief, as well as concerns raised by numerous parties, the City of Justin respectfully requests issuance of a PFD rejecting routes that include Links J3 and J4. Justin also requests any other such relief to which it has shown itself entitled.

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**ATTORNEYS FOR THE CITY OF JUSTIN**

**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 14, 2023, in accordance with Project No. 50664.

  
\_\_\_\_\_  
THOMAS L. BROCATO