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

APPLICATION OF ONCOR	§	
ELECTRIC DELIVERY COMPANY	§	BEFORE THE
LLC TO AMEND ITS CERTIFICATE	§	
OF CONVENIENCE AND NECESSITY	§	PUBLIC UTILITY COMMISSION
FOR RAMHORN HILL TO DUNHAM	§	
345 KV TRANSMISSION LINE IN	§	OF TEXAS
DENTON AND WISE COUNTIES	§	

**THE CITY OF JUSTIN'S
EXCEPTIONS TO PROPOSAL FOR DECISION**

DECEMBER 12, 2023

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**THE CITY OF JUSTIN
EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION OF TEXAS:

The City of Justin (Justin or City) files these Exceptions to the Proposal for Decision (PFD) for consideration by the Public Utility Commission of Texas (Commission). The deadline for filing Exceptions to the PFD is December 12, 2023.¹ Therefore, these Exceptions are timely filed. The City of Justin respectfully show as follows:

I. INTRODUCTION

Justin commends the Administrative Law Judges (ALJs) on a thorough and well-reasoned PFD. The ALJs' analysis was thorough, and the ALJs made considerable recommendations that are supported by the record and should be adopted. Specifically, the ALJs correctly recommend a finding that Oncor included an adequate number of reasonably differentiated alternative routes in its application,² Oncor complied with the Texas Administrative Code's (TAC) notice requirements,³ and that the evidence established the need for the transmission line project.⁴ However, Justin urges the Commission to reject the ALJs' recommendations for approval of the Recommended Route or Secondary Route and instead approve a route that uses the Justin Modification. The Justin Modification link sequence should be used in the best route because the Commission should take the City's current development of habitable structures, all significant

¹ Exceptions and Replies Memorandum (Nov. 14, 2023).

² SOAH Proposal for Decision at 7-8 (Nov. 10, 2023).

³ *Id.* at 8-10.

⁴ *Id.* at 12-13.

community values, and the permanent effects of clearing and maintaining the transmission line on the natural features and aesthetic into consideration when determining the best route.

The following exceptions focus mainly on Link J3 since Oncor's preferred route (Route 179), intervenors' proposed modifications to the preferred route, and the ALJs' recommended routes (Recommended Route and Secondary Route) contain Link J3. Justin re-iterates its opposition to the use of Link J4; however, since no party recommends a route using Link J4,⁵ Justin's exceptions are not focused on this link.

IV. PRELIMINARY ORDER ISSUES

E. ROUTING

2. The Discussed Routes and Modifications

g. The Justin Modification (Central Region)

The PFD correctly describes the Justin Modification to Route 179 as proposed by Justin and supported by almost all intervenors in the Central Region.⁶ The PFD also accurately recognizes that a majority of the habitable structures along Route 179 and the proposed modifications are within the central region, and references the zigzagging nature of Link J3 through the residential neighborhood, Legacy Ranch.⁷ However, when stating that the largest discrepancy between Route 179-C and Justin Modification is the number of habitable structures,⁸ the PFD fails to acknowledge the habitable structures currently under the beginning stages of development that Link J3 and its connecting links will effect. Such a failure ignores the totality of the habitable structures affected by the proposed transmission line and the effect the proposed links would have on Justin's strong sense of community, growth, and development.

As Link J3 moves westerly after intersecting Boss Range Road it bisects multiple plots of land that have, according to the Mayor of Justin, James Clark (Mayor Clark), already been platted for construction of habitable structures.⁹ Further developments in Justin and its surrounding areas, as discussed in Mayor Clark's testimony, include Treeline, Legacy Ranch Phase II, Reatta Ridge Phase 3 and 5, Boss Range Estates, Wildflower Ridge Addition, Glen Coe, and Justin Town

⁵ *Id.* at 28.

⁶ *Id.* at 27.

⁷ *Id.* at 28.

⁸ *Id.* at 29.

⁹ Direct Testimony of James Clark, Justin Ex. 1 at Bates 11:3-6.

Square.¹⁰ Additionally, Link J3 and its connecting Link K1, as proposed, would bisect TCCI Range-Mead LLC's property, resulting in the disruption of the progress of a much needed residential development.¹¹ Steps have already been taken to develop these habitable structures.

The increase in development of habitable structures is due to the exponential growth in the City of Justin and surrounding area, and the City's extra-territorial jurisdiction (ETJ). The City's population is expected to be 9,327 by 2027, which is a 33% increase.¹² Justin is expected to provide services within its City limits and ETJ to a minimum of 7,800 dwelling units within the next 5-10 years.¹³ The Recommended Route, Secondary Route, Route 179, or any of the proposed modifications that use Link J3 would be detrimental to such development and prosperity of the City. Thus, it is crucial to take the development of habitable structures within the City and surrounding area, and its ETJ into consideration when deciding the best route.

3. Analysis and Considerations Applicable to All Routes and Modifications

a. Community Values

The PFD incorrectly concludes that the use of avoidance of interference with existing and future development, as a community value, in determining the best route is of limited significance.¹⁴ The ALJs base this conclusion on the fact that this community value was expressed by all intervenors.¹⁵ However, the fact that intervenors expressed concerns related to the interference with existing and future development should not limit the significance of this as a factor in determining the best route. Instead, the clear expressions of concern show how important existing and future development as a community value is to those who may be directly and indirectly affected by the transmission line. Thus, the ALJs should have viewed this as a more significant community value factor in making their recommendations.

In doing so, the ALJs should have taken into consideration the great impact Link J3 would have on Justin and its surrounding communities. As discussed above, Justin is growing exponentially and developing to support this growth. Notwithstanding this fact, the City still

¹⁰ *Id.* at Bates 7:12-15.

¹¹ TCCI Range – Mead LLC's Initial Brief at 3-4 (Sept. 7, 2023).

¹² The City of Justin's Reply Brief at 8 (Sept. 14, 2023) (Justin's Reply Brief).

¹³ Justin Ex. 1 at Bates 7:7-9.

¹⁴ PFD at 34.

¹⁵ *Id.*

values and makes efforts to preserve the City's strong sense of community. Justin's community values include culture, community, and identity.¹⁶ One way in which Justin preserves these community values in a growing and expanding community is by developing and maintaining recreational park areas that would be affected by the building of the transmission line using either Link J3 or Link J4. For example, as planned, Link J3 crosses over Catherine Branch Creek multiple times and over a retention pond between two residential neighborhoods.¹⁷ A transmission line traversing over these natural features would not only diminish the natural aesthetic of them but lessen the value these features bring to the community. Many community members use these features in a multitude of ways, including fishing and birdwatching.¹⁸ These activities would be disrupted by the placement of the transmission line, and the transmission effects on the natural features as described below in detail.

Although the ALJs find the avoidance of interference with existing and future development as a community value to be of limited significance, the ALJs still highlighted important issues and representative concerns of landowner witnesses and parties as they pertain to community values.¹⁹ It is worth noting that all of the highlighted important issues and representative concerns as discussed by the ALJs were concerning the negative impacts of Route 179, Route 179-C, and Link J3 on the affected parties who oppose the use of Link J3.²⁰ This further demonstrates the significant impact the Link would have on the community.

Further, Commission Staff (Staff) has previously stated the proper interpretation of the term community values as "a shared appreciation of an area or other natural or human resources by members of a national, regional, or local community"²¹ and "may include landowner concerns

¹⁶ Justin's Initial Brief at 7 (citing Justin Ex. 1 at Bates 6).

¹⁷ Justin Ex. 1 at Bates 8:7-23.

¹⁸ *Id.* at Bates 8:20-22.

¹⁹ PFD at 32.

²⁰ *Id.* at 33.

²¹ 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)).

and opposition.”²² Based on this interpretation, the City of Justin’s strong community value is shown by the mass of concerned citizens who have taken part in this matter by filing protests, intervening, and participating in the hearing on the merits. Not only was the Town Hall meeting held by Justin to discuss the project the highest attended Town Hall,²³ but approximately 100 protests and 55 motions to intervene were filed by Justin residents.²⁴ This active participation and continued effort by the residents of Justin to protest the transmission line attest to the appreciation the community holds for its City and the natural resources surrounding it. This shared appreciation should not be overlooked and instead taken into account as a significant factor in determining the best route.

Justin urges the Commission to reject the ALJ’s conclusion that the avoidance of interference with existing and future development as a community value is of limited significance when determining the best route. Instead, this aspect and all aspects of community values should be viewed as significant factors in making such a determination.

c. Cultural, Aesthetic, and Historical Values

The PFD improperly classifies the clearing of rights-of-way as a temporary aesthetic effect.²⁵ Instead, the clearing of the rights-of-way should be considered a permanent affect because the rights-of-way cleared for the transmission lines are continued to be maintained and not always returned to their natural state.

As shown in Oncor Witness, Brenda Perkins’, rebuttal testimony, the hike and bike trails under the transmission lines have an absence of trees and vegetation.²⁶ This is in stark contrast to some of the natural features that the recommended transmission line would traverse. Specifically, the Recommended Route crosses 22,162 feet of cropland/hay meadow; 59,729 feet of rangeland pasture; 10,492 feet of upland woodlands; and 27 streams.²⁷ All of which would need to be cleared

²² *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 Counties, Texas*, Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010)).

²³ Justin Ex. 1 at Bates 15:8-11.

²⁴ *Id.* at Bates 15:14-15.

²⁵ PFD at 37.

²⁶ Rebuttal Testimony and Exhibits of Brenda J. Perkins, Oncor Ex. 13 at Bates 11-17.

²⁷ PFD, Appendix A at A-2.

for the transmission line to be constructed and maintained. As further evidenced by the pictures provided by Ms. Perkins, the rights-of-way are not returned to their natural state. This is further demonstrated in Commission Staff's witness, Mr. Poole's, testimony which indicates that the impacts to vegetation would be the result of clearing and maintaining the right-of-way.²⁸ By classifying the clearing of the right-of-way as temporary, the ALJs ignore the continued maintenance that occurs when a transmission line is built, resulting in the area being permanently damaged.

The construction and maintenance of the transmission line near a water feature located near a city, such as Trail Creek or Catherine Branch Creek in the City of Justin, would be detrimental to the natural aesthetic and recreational use of the water feature that is used by the community. As expressed by Mayor Clark, the construction of the transmission line using Link J3 would not only ruin the benefit the pond and Catherine Branch Creek provide to the community but also traverse closely to the surrounding homes diminishing the enjoyment of those residents' backyards.²⁹ Instead of the natural landscape the surrounding community was able to enjoy, the community would have a permanent transmission line in their backyards ruining the aesthetic and use of the natural landscapes they previously enjoyed.

Although the PFD does properly classify the visibility of the transmission structures and lines as a permanent effect, it incorrectly classifies the construction and clearing of the right-of-way as a temporary aesthetic effect.³⁰ This incorrect classification minimizes the long-term impact of the clearing and maintaining of the right-of-way which should be considered a permanent effect and should be taken into consideration when determining the best route.

d. Environmental Integrity

The PFD correctly indicates that the Justin Modification's impact on environmental integrity is less than Oncor's proposed route, Route 179. In addition to this comparison, Justin would like to further emphasize the environmental impact of the Justin Modification compared to the ALJs' Recommended Route. As discussed above, the Recommended Route crosses 22,162 feet of cropland/hay meadow; 59,729 feet of rangeland pasture; 10,492 feet of upland woodlands;

²⁸ *Id.* at 40; *see also* Direct Testimony of John Poole, PUC Staff Ex. 1 at Bates 35:15-17.

²⁹ Justin Ex. 1 at Bates 10:11-23.

³⁰ PFD at 37.

and 27 streams.³¹ Although, as the PFD indicates, the Justin Modification does increase the length it crosses riparian areas by 2,326 feet, it reduces the amount of streams crossed by four, travels over 4,658 feet less cropland/hay meadow, and 2,264 feet less rangeland pasture and reduces the length it crosses through upland woodlands by 108 feet.³² Overall, the Justin Modification has less of an impact on the environmental integrity than the other proposed routes.

Some of the environmental features being affected, such as upland woodlands, are comprised of vegetation like trees that would have to be destroyed to clear the 100-foot right-of-way for the transmission line. As the PFD discusses, Mr. Poole, testifying on behalf of PUC Staff, indicated that the impacts to vegetation would be the result of clearing and maintaining the rights-of-way.³³ Clearing and maintaining right-of-way through cropland/hay meadow, rangeland pastures, or upland woodlands would alter the state of the land, as well as access to the land as needed which may affect the grazing of livestock on the land. Additionally, crossing and paralleling streams or ponds would lead to the destruction of the vegetation around the water feature, destroying the natural habitat for wildlife, and causing erosion. Such impacts would be lessened if the route were moved to more compatible and already existing rights-of-way.

Justin urges the Commission to consider the overall lessened impact on the environment that the Justin Modification would provide, as opposed to the other proposed routes.

e. Costs

The ALJs improperly include in their analysis a statement that the average cost of alternative routes that use the Justin Modification link sequence are more expensive, suggesting that use of the Justin Modification link sequence would likely be more expensive than Route 179 or 179-C.³⁴ Inclusion of this statement in their analysis is misleading and, therefore improper, because it does not accurately reflect the costs of the links.

This statement made by the ALJs is improper because, and even as the ALJs express, “there is no direct evidence for the cost of one of these routes if it included the Justin Modification.”³⁵

³¹ *Id.* at Appendix A at A-2.

³² *Id.* at 40.

³³ *Id.*

³⁴ *Id.* at 29-30.

³⁵ *Id.* at 42.

Therefore, such a statement would, on its face, lead one to believe the Justin Modification link sequence is more expensive when there is no direct evidence of the cost of the Justin Modification, and there are other factors, such as other differing links, that could also be a reason as to why the alternative routes that use the Justin Modification are more expensive. Each of the routes that include the Justin Modification link sequence have at least seven other links that differ from Route 179.³⁶ Additionally, the most expensive those routes that includes the Justin Modification link sequence have the most links that differ from Route 179.³⁷ Thus, it is improper to state that the average cost of alternative routes that use the Justin Modification link sequence are more expensive, suggesting that use of the Justin Modification link sequence would likely be more expensive.

However, if the Commission takes the ALJs' statement into consideration, the increase in the cost of routes that use the Justin Modification link sequence should not be a significant factor weighing against the Justin Modification route in the determination of the best route. The routes that use the Justin Modification link sequence that are most similar to Route 179, still differing by seven links, range from \$180,040,000 to \$182,823,000.³⁸ This difference, between \$1,291,000 and \$4,074,000, is small relative to the overall cost of the project.³⁹ The total expense of the project should be taken into account when looking at the difference in the costs of each route. A \$1 million to \$4 million difference in cost of routes is small in comparison to the \$178 million or more estimated to be spent on the transmission line project. This small difference should, therefore, not be given great weight when compared to all the other factors the Commission is required to take into consideration under the Public Utility Regulatory Act and TAC.

As explained above, the PFD's statement that the average cost of alternative routes that use the Justin Modification link sequence are more expensive, suggesting that use of the Justin Modification link sequence would likely be more expensive than Route 179 or 179-C, is improper and misleading. The Commission should not take such a statement into consideration when

³⁶ 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. 1 at Bates 702 (routes 43, 44, 58, 70, and 87).

³⁷ Notice of Errata, Oncor Ex. 24 at Bates 14 (Routes 58 and 70).

³⁸ *Id.* at Bates 14-15 (Routes 43, 44, and 87).

³⁹ *Id.* at Bates 12-18.

determining the best route. However, if the Commission does take this statement into consideration, the Commission should also consider the minimal difference in costs of the Justin Modification to the other proposed routes compared to the estimated total costs of the transmission line projects when determining the best route.

5. Summary of Routing Recommendation

The PFD improperly concludes that the negatives of the proposed Justin Modification outweigh the positives of “a shorter length and mitigation of effect on certain intervenors.”⁴⁰ In coming to such a conclusion, the ALJs claim the environmental effect is minimal;⁴¹ however, as discussed above, this is incorrect. The photographs of the transmission lines relied upon by Ms. Perkins are not only an example of the use of the transmission lines in a park or recreation area,⁴² but also show how the rights-of-way are cleared and maintained. These photos reveal a stark difference from the natural state of the features the transmission lines would be crossing. A transmission line requiring clearing of a right-of-way for construction and maintenance that crosses natural features with vegetation would result in the destruction of vegetation that was there. The destruction of vegetation would affect the natural habitat of wildlife, cause erosion, and affect the natural aesthetic that the surrounding communities enjoy. These effects are neither minimal nor temporary.

The Justin Modification would decrease the number of streams crossed, the length of route parallel to streams, the length across lakes or ponds, and the length across upland woodlands.⁴³ These are all positives that would have an impact on the environmental integrity of the study area that Oncor looked at. Thus, it is improper to discount these positives of the Justin Modification as the ALJs did in the PFD by asserting the environmental impact is minimal.

V. FINDINGS OF FACT

Justin excepts to the proposed Findings of Facts (FoFs) to the extent they are inconsistent with these Exceptions. Justin respectfully requests that the FoFs be conformed as necessary to

⁴⁰ PFD at 50.

⁴¹ *Id.*

⁴² Oncor Ex. 13 at Bates 4:6-11, Bates 11-15, Bates 17.

⁴³ Oncor Response to DHL Supply Chain RFI 1-03, Ex. DHL-47.

grant Justin's exceptions. Justin will submit proposed revised FoFs with its Replies to Exceptions as permitted by 16 TAC § 22.261(d)(2).

VI. CONCLUSIONS OF LAW

Justin excepts to the proposed Conclusions of Laws (CoLs) to the extent they are inconsistent with these Exceptions. Justin respectfully requests that the CoLs be conformed as necessary to grant Justin's exceptions. Justin will submit proposed revised CoLs with its Replies to Exceptions as permitted by 16 TAC § 22.261(d)(2).

VII. PROPOSED ORDERING PARAGRAPHS

Justin excepts to the proposed Ordering Paragraphs to the extent they are inconsistent with these Exceptions. Justin respectfully requests that the Ordering Paragraphs be conformed as necessary to grant Justin's Exceptions. Justin will submit proposed revised Ordering Paragraphs with its Replies to Exceptions as permitted by 16 TAC § 22.261(d)(2).

VIII. CONCLUSION

Justin respectfully requests that the Commission grant its Exceptions to the PFD, as set forth above, and grant Justin such other and further relief to which it may be entitled.

Respectfully submitted,

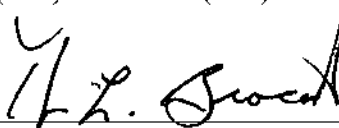
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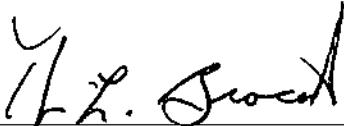
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ATTORNEYS FOR THE CITY OF JUSTIN

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 December 12, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



THOMAS L. BROCATO