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DIRECT TESTIMONY
OF RUSSELL J. MARUSAK, WITNESS FOR
ONCOR ELECTRIC DELIVERY COMPANY LLC

DIRECT TESTIMONY OF RUSSELL J. MARUSAK

I. POSITION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND ADDRESS:

A. My name is Russell J. Marusak. I am employed by Halff, an engineering consulting firm. I hold the position of Senior Project Manager. My business address is 1201 North Bowser Road, Richardson, Texas 75081.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL QUALIFICATIONS.

A. Since 1998, when I was first employed as an environmental consultant, I have provided environmental planning and consulting services for electric transmission line projects, transportation projects, land development projects, and other linear projects, including natural gas, sewer, and water pipelines. I have managed or provided technical support for numerous routing and environmental impact analyses for 138 kV and 345 kV transmission line projects in Texas since 2002. For example, I managed three environmental assessments and routing studies for Oncor 345 kV transmission line projects that were included in the Competitive Renewable Energy Zone ("CREZ") initiative of the Public Utility Commission of Texas ("Commission")—Docket Nos. 37408, 38140, and 38597—ranging in length from 40 to 160 miles. Since CREZ, I have managed numerous routing and environmental impact analyses for multiple 345 and 138 kV transmission lines. Currently, I am managing the environmental assessment and routing study for the proposed Ramhorn Hill-Dunham 345 kV transmission line project in Denton and Wise counties ("Proposed Transmission Line Project"). My educational and professional qualifications are more fully presented in Exhibit RJM-1 attached hereto.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?

A. Yes, I previously provided testimony in Commission Docket Nos. 37408, 38140, 38597, 47368, 48095, 48785, 49302, 49723, 51737, 53053, and 54733.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to introduce, support, sponsor, and describe the *Environmental Assessment and Routing Study for the Proposed Ramhorn Hill Switch to Dunham Switch 345 kV Transmission Line Project in Denton and Wise Counties, Texas* ("Environmental Assessment") prepared by Halff at the request of Oncor. The Environmental Assessment is included as Attachment No. 1 to Oncor's Standard Application for a Certificate of Convenience and Necessity ("CCN") for a Proposed Transmission Line (the "Application"). The Application, as it may be amended and/or supplemented, will be offered into evidence by Oncor at the hearing on the merits. The facts and statements contained in the Environmental Assessment, which I am sponsoring, are true and correct to the best of my knowledge.

III. ENVIRONMENTAL ASSESSMENT

Q. WHY DID HALFF PREPARE THE ENVIRONMENTAL ASSESSMENT?

A. Oncor retained Halff to prepare the Environmental Assessment for the Proposed Transmission Line Project. My responsibilities included oversight and participation in all elements of the preparation of the Environmental Assessment from baseline data acquisition to development of the alternative routes.

Q. WAS ANYONE OTHER THAN YOU INVOLVED IN THE ENVIRONMENTAL ASSESSMENT PROCESS?

A. Yes. Halff assembled a team of professionals with expertise in different environmental and land use disciplines, including soils, physiography, geology, water resources, terrestrial and wetland ecology, community values and resources, aesthetics, cultural resources, and mapping, among others (the "Halff Project Team"), all of whom were involved in data acquisition, routing analysis, and environmental assessment for the Proposed Transmission Line Project. Section 8.0 of the Environmental

Assessment presents a list of the primary preparers of the document.

Q. WHAT DOES THE ENVIRONMENTAL ASSESSMENT ADDRESS?

A. The Environmental Assessment provides a detailed description of the data gathered and analyzed by Halff with respect to the Proposed Transmission Line Project, the project area, and the routing procedures and methodology Halff utilized to delineate and evaluate alternative routes.

Q. PLEASE DESCRIBE THE OBJECTIVES OF THE ENVIRONMENTAL ASSESSMENT.

A. The objectives of the Environmental Assessment were to identify and evaluate the alternative routes for the Proposed Transmission Line Project. Halff's approach involved a series of tasks designed to address: (1) the requirements of Texas Utilities Code § 37.056(c)(4)(A)-(D); (2) the requirements of 16 Texas Administrative Code ("TAC") § 25.101(b)(3)(B), including the Commission's policy of prudent avoidance; (3) CCN application form requirements (including but not limited to Question Nos. 9-10 and 17-29); and (4) Oncor's routing policies. The tasks included scoping and study area delineation, data collection, constraints mapping, preliminary alternative route identification, participation in public participation meetings, modification/addition of alternative route links following the public participation meetings, and alternative route development. True and correct copies of Texas Utilities Code § 37.056 and 16 TAC § 25.101 are attached to my direct testimony as Exhibits RJM-2 and RJM-3, respectively.

Q. PLEASE EXPLAIN HOW THE STUDY AREA WAS DELINEATED FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. To identify preliminary alternative routes for the Proposed Transmission Line Project, Halff first delineated a study area, gathered data regarding the study area, and mapped constraints within the study area.

The study area for the Proposed Transmission Line Project must encompass the endpoints for the Proposed Transmission Line Project, the

proposed Ramhorn Hill Switch and the proposed Dunham Switch—and include an area large enough that a reasonable number of forward-progressing, geographically diverse routes could be identified. The purpose of the study area is to establish boundaries and limits for the information gathering process (i.e., the identification of environmental and land use constraints). Figures 3-1A, 3-1B, 3-1C, and 3-1D (Appendix H) of the Environmental Assessment depict the study area delineated by Halff.

Halff reviewed United States Geological Survey ("USGS") topographic maps and aerial photography to develop the study area boundary for the Proposed Transmission Line Project. Halff located and depicted the project endpoints on the maps and identified major features in the study area, such as Grapevine Lake, Interstate Highway 35W ("I-35W"), State Highway ("SH") 114, United States Highway ("US") 377, Farm-to-Market Road ("FM") 1171, FM 407, FM 156, numerous municipalities, numerous airports, the Texas Motor Speedway, existing transmission infrastructure, and other features. The study area is rectangular in shape and encompasses approximately 149.6 square miles, with the longer axes extending approximately 17.6 miles east to west and the shorter axes extending approximately 8.5 miles north to south. The study area is centered to the north of the project's endpoints due to dense urban development south of the project's endpoints in southern Denton County and northern Tarrant County, which severely limits the routing opportunities in the far southern portion of the study area.

Q. HOW DID HALFF IDENTIFY ENVIRONMENTAL AND LAND USE CONSTRAINTS IN THE STUDY AREA?

A. Once the study area boundary was identified, Halff initiated a variety of data collection activities. One of the first such activities was the development of a list of officials to be mailed a consultation letter requesting information on constraints that might impact the Proposed Transmission Line Project. Halff mailed out consultation letters beginning in September 2022. The purpose

of the letters was to inform the various officials and agencies about the Proposed Transmission Line Project and to give those officials and agencies the opportunity to provide any information they had regarding the project and/or general project area. In response, Halff and Oncor received information from various public officials and agencies. The consultation letters and related correspondence are included as Appendix A to the Environmental Assessment.

Among other things, data collection activities also consisted of a review of: (1) files and records of various regulatory agency databases; (2) published literature; and (3) a variety of maps, including recent aerial photography, seamless topographical maps from the USGS, Texas Department of Transportation maps, county highway maps, U.S. Fish & Wildlife Service National Wetlands Inventory maps, and county appraisal district land parcel boundary maps. During the course of the data collection activities, Halff personnel also conducted reconnaissance surveys of the study area on September 4, November 23, and December 7-8, 2022, as well as on January 14, February 16, March 4, and April 25, 2023, to confirm research findings and identify constraints that were not previously noted. The data collection effort began in the early stages of the Proposed Transmission Line Project's planning and continued until the completion of the Environmental Assessment.

Q. HOW DID HALFF USE THE DATA COLLECTED THROUGH THIS PROCESS?

A. Information gathered during data collection was used to develop an environmental and land use constraints map, which is included as Figures 3-1A, 3-1B, 3-1C, and 3-1D (Appendix H) of the Environmental Assessment. These figures depict the environmental and land use constraints identified by Halff through the data collection process and field investigations. In this context, constraints are land use or landscape features that may affect or be affected by the location of a transmission line.

The goal of this approach is to identify areas where constraints are absent or fewer, or those areas with a lower likelihood of containing existing natural or human resources that could be affected by a transmission line.

Q. DID HALFF ENCOUNTER ANY ROUTING CHALLENGES UNIQUE TO THIS STUDY AREA?

A. Yes. This study area contains pockets of dense urban and suburban development, which is expanding rapidly—even relative to the general growth and development occurring throughout the state. The study area also contains a substantial amount of environmentally sensitive land owned by the United States Army Corps of Engineers ("USACE").

Existing constraints in the study area include two major highways (I-35W and SH 114); several other major thoroughfares (US 377, FM 407, FM 1171, and FM 156); numerous residential communities and master-planned subdivisions; many commercial, industrial, and recreational facilities; oil & gas pipelines, electric transmission lines, and other utility infrastructure; the Texas Motor Speedway; Alliance Airport; and a BNSF Railway Company Intermodal rail yard. These facilities are major drivers for the development and growth this area is experiencing. Several municipalities are interspersed throughout the study area, including the towns of Argyle, Bartonville, Flower Mound, and Northlake, as well as the cities of Justin, New Fairview, and Rhome. Including Alliance Airport, there are 35 aircraft landing facilities located in and adjacent to the study area. These facilities create unique challenges due to Federal Aviation Administration regulations and notification requirements regarding the location of structures within airport glideslopes.

In addition to these existing constraints, vacant land in the study area is rapidly developing for new commercial, industrial, and residential uses. During the preparation of the Environmental Assessment, Oncor was contacted by numerous developers to inform Oncor of new developments at various stages of planning, including some that have already begun

grading and/or construction as of the time of the Application's filing. Where possible, Halff modified the preliminary alternative links to accommodate these developments; but due to the sheer volume of new construction, some overlap with development plans is unavoidable. The direct testimony of Oncor witness Mr. Harsh Naik provides additional details regarding the rapid development in this area from an electrical planning perspective and how it relates to the critical reliability need for the Proposed Transmission Line Project. The rapid pace of new development will likely continue to introduce new constraints throughout the CCN approval, right-of-way ("ROW") acquisition, design, and construction processes.

Finally, the southeastern portion of the study area near the proposed Dunham Switch includes approximately 3,250 acres of land owned and managed by the USACE. Federal regulations severely restrict construction of new transmission lines on this property. Most of the USACE property is designated as Environmentally Sensitive Area ("ESA"), signifying areas where scientific, ecological, cultural, and aesthetic features exist, and which are designated as such to protect sensitive habitats or cultural resources.

Oncor cannot cross the USACE property without approval from the federal government. Due to regulations and restrictions on use of the USACE property, even if the Commission approved a route crossing the USACE property, Oncor would be required to seek and obtain federal approval from the USACE for the crossing. This could take several years post CCN-approval, and the USACE could still deny the crossing at its discretion. With certain exceptions, unless there is a direct benefit to the federal government, the USACE will only grant such a crossing if there are "no viable alternatives." Thus, while Halff coordinated closely with USACE representatives, municipal officials, and state and federal legislators regarding a potential crossing of the USACE property, Oncor cannot affirmatively state that a route crossing the USACE property would be

permitted or constructible. Moreover, USACE representatives directly informed Oncor that certain USACE crossings will not be approved.

Q. WHAT PROCESS DID HALFF UTILIZE TO IDENTIFY THE PRELIMINARY ALTERNATIVE ROUTES FOR THE PROPOSED TRANSMISSION LINE PROJECT?

A. Given that a number of potential routes could be drawn to connect the termination points, the constraints mapping process was used in selecting and refining possible alternative routes. Upon completion of the initial data collection activities and constraints mapping process, the next step in the routing process was to identify preliminary alternative links to connect the endpoints for the Proposed Transmission Line Project. Halff identified numerous preliminary alternative links forming over 600,000 theoretical routes. As discussed later in my testimony, Halff, in consultation with Oncor and with input from local landowners, officials, and agencies, refined the number and location of potential alternative links and routes for the Proposed Transmission Line Project. Ultimately, Halff provided 221 alternative routes for Oncor's consideration.

In identifying preliminary alternative links, Halff considered a variety of information, including, among other things: (1) input received from correspondence with agencies, local officials, and the public; (2) results from the visual reconnaissance surveys of the study area; (3) reviews of aerial photography; (4) findings of publicly available data collection activities; (5) the environmental and land use constraints map; (6) apparent property boundaries; (7) existing compatible corridors; and (8) locations of existing developments. Section 4.0 of the Environmental Assessment discusses Halff's identification of the preliminary alternative route links for the Proposed Transmission Line Project.

Q. DID HALFF CONSIDER OTHER ENDPOINTS FOR THE PROPOSED TRANSMISSION LINE PROJECT?

A. Yes. Halff evaluated three other potential locations for the proposed Dunham Switch. As explained Mr. Naik's direct testimony, the options for locating the Dunham Switch were limited because the Dunham Switch must tap into the existing Lewisville-Krum West/Roanoke 345 kV transmission lines. These transmission lines extend northeast from Oncor's existing Roanoke Switch, located approximately 2.5 miles south of the intersection of I-35W and SH 114. Thus, the other locations Halff evaluated for the Dunham Switch were all adjacent to the existing transmission lines and northeast of the site Oncor ultimately selected for the Dunham Switch. The purpose of evaluating potential alternate endpoints was to discern whether they might provide superior routing options or a greater range of routing opportunities. However, due to the location of the Lewisville-Krum West/Roanoke transmission lines relative to existing development in the study area and the USACE property, the alternative endpoints would only have extended the length of the transmission line without providing superior routing options or a greater range of routing opportunities. Therefore, Oncor chose to proceed with the Dunham Switch location proposed in the Application.

Q. DID HALFF CONSIDER ANY ALTERNATIVE ENDPOINT LOCATIONS THAT WERE SOUTHWEST OF THE PROPOSED DUNHAM SWITCH LOCATION?

A. No. The presence of the USACE property and dense urban development to its southwest do not provide any feasible routing opportunities that Oncor could use to reach the Ramhorn Hill Switch or to tap into the existing Lewisville-Krum West/Roanoke transmission lines.

Q. DID HALFF SOLICIT INFORMATION FROM THE TEXAS PARKS AND WILDLIFE DEPARTMENT ("TPWD") AS PRELIMINARY ALTERNATIVE LINKS WERE DEVELOPED?

A. Yes, in identifying and evaluating the preliminary alternative links, one of the agencies that Halff solicited information from was TPWD. Halff

requested that TPWD provide environmental and land use constraints information regarding threatened/endangered species, wetlands, or other areas of special interest to TPWD within the project study area. Appendix A of the Environmental Assessment includes Halff's letter to TPWD requesting information concerning the Proposed Transmission Line Project.

Q. PLEASE DESCRIBE THE TPWD CORRESPONDENCE RECEIVED BY HALFF IN RESPONSE TO HALFF'S REQUEST FOR INFORMATION.

A. Halff received a letter from TPWD that, among other things, described the Proposed Transmission Line Project, discussed certain state and federal laws and regulations (e.g., the Endangered Species Act), and provided comments and recommendations. TPWD recommended using existing facilities wherever possible and minimizing transmission line length. Where new construction is required, TPWD recommended paralleling existing linear infrastructure and utility ROW to minimize habitat fragmentation.

Q. HOW DOES HALFF RESPOND TO TPWD'S RECOMMENDATIONS?

A. Halff appreciates TPWD's input and takes its mission to protect the State's parks and wildlife for the citizens of Texas very seriously. Many of TPWD's recommendations for the project are already part of Halff's standard practice. To the extent that Halff's standard practice does not fully incorporate TPWD's recommendations, Halff believes that it generally accomplishes TPWD's goals while considering other factors, including but not limited to Texas Utilities Code § 37.056 and the Commission's substantive rules, which TPWD does not consider.

IV. PUBLIC INVOLVEMENT

Q. PLEASE DESCRIBE THE PUBLIC INVOLVEMENT PROGRAM UTILIZED FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. In addition to the consultation with local officials and departments and local, state, and federal regulatory agencies, the public involvement program included two public participation meetings and a review of information received from interested parties. The purpose of consulting with public

officials and other interested parties was to provide those parties with information regarding the process of transmission line routing and to get input from those parties regarding proposed projects or other land use constraints that could have an impact on the potential alternative routes.

The purpose of the public participation meetings, which were held on December 7 and 8, 2022, was to: (1) solicit comments and input from residents, landowners, public officials, and other interested parties concerning the Proposed Transmission Line Project, the preliminary alternative route links, and the overall transmission line routing process; (2) promote a better understanding of the Proposed Transmission Line Project, including the purpose, need, potential benefits, potential impacts, and the CCN certification process; (3) inform the public regarding the routing process, schedule, and decision-making process; and (4) gather information about the values and concerns of the public and community leaders. The figures found in Appendix B of the Environmental Assessment depict the location of the preliminary alternative route links as presented at the public participation meeting.

The public involvement program also included consultation and solicitation of information from local officials and various state and federal agencies in order to give such officials and agencies the opportunity to provide Halff with any information they had regarding the project and/or project area. Information received from the public involvement program was considered and incorporated into Halff's evaluation of the Proposed Transmission Line Project, routes, and alternative route links.

Q. PLEASE DESCRIBE THE TYPES OF FEEDBACK RECEIVED AT THE PUBLIC PARTICIPATION MEETINGS.

A. Feedback from the public participation meetings occurred in two primary ways. First, one-on-one conversations with personnel from Halff and Oncor, as well as personnel from Oncor's property abstracting contractor, Integra Realty Resources ("Integra"), allowed Oncor and its representatives

to receive information regarding interests and comments about the project. During the one-on-one conversations, attendees were able to provide comments and clarifications regarding structures and features depicted on the large aerial photographs displayed at the public participation meetings. Attendees were encouraged to locate and mark particular features of interest on the aerial exhibits and at the Geographic Information System (GIS) computer stations. In that manner, Halff gained insight into particular features of the study area as well as a sense of those values important to the communities potentially impacted by the Proposed Transmission Line Project.

Second, in addition to the opportunities for real-time feedback, each attendee at a public participation meeting received a questionnaire that solicited comments on the Proposed Transmission Line Project. Oncor and Halff received 27 questionnaires at the December 7th public meeting and 44 questionnaires at the December 8th public meeting. Additionally, Oncor and Halff received thousands of questionnaires and/or comments submitted after the meeting in lieu of a questionnaire. These comments were considered and factored into Halff's evaluation of the alternative routes. Additional details on the public participation meeting process are provided in the direct testimony of Oncor witness Ms. Brenda J. Perkins.

Q. WHAT GENERAL ISSUES WERE RAISED IN THE PUBLIC COMMENTS?

A. Generally, comments tended to express a preference to avoid particular features and locations in the study area, including schools, churches, airports, neighborhoods, and commercial developments. Oncor received numerous comments from residents of Northlake and Argyle expressing a preference that the Proposed Transmission Line Project avoid those communities altogether. A substantial number of commenters expressed a preference for minimizing the length of the Proposed Transmission Line Project. Other commenters expressed concerns regarding property values, health and safety, and impacts to aesthetics, natural resources, and

existing land uses. Finally, a number of commenters expressed a preference for the Proposed Transmission Line Project to cross the USACE-owned property located southwest of the Dunham Switch. The public comments received are addressed in more detail in Section 5.0 of the Environmental Assessment.

Q. WHAT MODIFICATIONS DID HALFF MAKE TO THE PROPOSED ROUTING ALTERNATIVES FOLLOWING THE PUBLIC INVOLVEMENT PROGRAM?

A. Based on information gathered through the public participation meeting, coordination with local, state, and federal officials, recommendations from development representatives, and site visits of the study area following the public participation meeting to verify the status of potential developments, Halff further evaluated the constraints in the study area and modified, deleted and added several alternative route links as a result. These changes were intended to, among other things: (1) accommodate existing habitable structures, habitable structures currently being constructed, and other known active and/or planned development within the study area; (2) parallel property boundaries; (2) avoid a pond associated with nearby oil and gas facilities; (3) provide additional or more direct pathways through the study area; (4) eliminate redundant links; and (5) eliminate a group of links in the northern portion of the study area.

Section 6.0 of the Environmental Assessment and Routing Study discusses the alternative route link modifications, additions, and deletions in more detail, and Appendix C contains map figures illustrating these changes.

V. USACE CROSSING ANALYSIS

Q. WHAT IS THE PROCESS FOR OBTAINING APPROVAL TO CROSS USACE LAND?

A. Transmission line crossings of USACE-owned and -managed property are governed by the Federal Non-Recreational Outgrant Policy ("Outgrant

Policy"). As stated in that policy, the two rationales for granting such a crossing are: (1) there is no viable alternative to the activity or structure being located on the USACE land or waters, or (2) there is a direct benefit to the federal government. "Viable alternatives" in the Outgrant Policy are defined as "[o]ther lands and/or waters (not under Corps management) that can meet the intended objective of the request." Viability is determined without consideration to cost factors or the perceived availability or underutilization of USACE lands or waters. This means that a crossing of USACE property will not be granted if any feasible alternative route exists that does not require crossing USACE property. A copy of the Outgrant Policy is included as Exhibit RJM-4 to my direct testimony.

The Outgrant Policy also recommends that USACE lake offices establish designated utility corridors in Project Master Plans to serve as the preferred location for future outgrants, such as easements for transmission lines, and that crossings should utilize these corridors where they exist. There are 20 designated utility corridors associated with Grapevine Lake, five of which (Utility Corridors 11-15) were evaluated for the routing of the Proposed Transmission Line Project. The USACE has adopted specific restrictions on the use of each designated utility corridor, including restrictions on corridor width, installation of overhead facilities, and construction processes.

USACE approval of any route across USACE lands is subject to provisions of the National Environmental Policy Act ("NEPA"). Proposed actions generally consistent with allowances in the in the Grapevine Lake Master Plan ("Master Plan"), such as a transmission line route using an existing utility corridor as defined in the Master Plan, subject to the established restrictions and without modification, may qualify for a categorical exclusion.

In contrast, a transmission line route that would substantially modify a designated utility corridor or the restrictions for its use, or that would occur

outside of a designated corridor, depending on scope of impacts, would be subject to NEPA evaluation through either an environmental assessment or environmental impact statement, either of which would entail additional interagency coordination and public notice. Per correspondence with the USACE, the best-case timeline for an environmental assessment NEPA review would be a minimum of six to eight months. However, a standard and more realistic timeline is closer to one to two years, after which the USACE could grant or deny the crossing at its discretion.

Q. IN YOUR TIME AT HALFF, HAVE YOU MANAGED OR SUPPORTED PROJECTS THAT HAVE REQUIRED COORDINATION WITH THE USACE REGARDING THE NON-RECREATIONAL OUTGRANT PROCESS?

A. Yes.

Q. PLEASE CITE PROJECT EXAMPLES THAT LEND TO YOUR UNDERSTANDING OF THE NON-RECREATIONAL OUTGRANT PROCESS?

A. As noted in Exhibit RJM-1, I managed the Environmental Assessment for Oncor's Krum West-Anna 345 kV transmission line project. On that project, Halff and Oncor determined early in the routing process that crossing the USACE-owned Greenbelt corridor between Ray Roberts Lake and Lewisville Lake would provide more direct and shorter routes connecting the project endpoints. Under the provisions of the Outgrant Policy, Halff met early with the USACE to explore ways to cross USACE lands. Through this collaborative effort, preliminary alternative route links were developed and an NEPA environmental assessment was prepared to document the analysis of several alternatives. One alternative involved rebuilding an existing Oncor transmission line and co-locating it with the proposed line, entirely within the existing 100-foot Oncor easement.

After ten months of coordination and considering multiple alternatives, the USACE deemed that the re-build option was a viable

alternative that had the least impact to USACE lands. The USACE discontinued review of the other potential alternatives that would cross federal lands outside of the existing utility easement and did not publish the environmental assessment. A letter to Oncor explaining USACE's decision to discontinue evaluation of the other alternatives for that project is included as Exhibit RJM-6 to my direct testimony.

Another example is the Park Boulevard Extension project which is a linear transportation project proposed by Collin County. I provided technical support in preparing the Preliminary Information Document ("PID") and Detailed Information Report ("DIR") as part of the formal outgrant request. Formal initiation of the process began in 2014 with the PID, which evaluated project alternatives and environmental impacts. Upon USACE review of the PID, it was determined that processing the outgrant could continue. Schematic designs and more detailed environmental analyses were conducted for Collin County's preferred alternative and, after multiple draft submittals, the final DIR was completed in 2018. The USACE issued easement documents in October 2018 for approximately 0.75 net acre for those portions of the project on USACE property. In other words, in that case, it took approximately four years for the USACE to approve a 0.75-acre outgrant.

Q. PLEASE DESCRIBE HALFF'S COORDINATION WITH THE USACE REGARDING POTENTIAL CROSSINGS FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. As part of its agency outreach, Halff coordinated directly with the USACE Grapevine Lake Office to verify USACE's application of the Outgrant Policy. In consideration of the Outgrant Policy and guidance from the lake office, Halff's development of preliminary links first sought viable alternatives that did not cross USACE lands. Additionally, Halff and Oncor held numerous meetings with USACE representatives and various local, state, and federal officials to address specific potential crossings.

Q. HOW DID HALFF EVALUATE POTENTIAL CROSSINGS OF THE USACE PROPERTY?

A. In assessing the feasibility of potential crossings of the USACE property and surrounding areas, Halff relied on: (1) the language of the Outgrant Policy; (2) feedback from USACE representatives; (3) the locations and existing uses of the designated utility corridors; (4) a review of the existing constraints near the USACE property; (5) input from Oncor's planning and engineering teams; and (6) Oncor's routing policies.

Q. PLEASE DESCRIBE THE POTENTIAL USACE CROSSINGS THAT WERE EVALUATED FOR THE PROPOSED TRANSMISSION LINE PROJECT.

A. The crossings that Halff and Oncor evaluated include: (1) an aerial spanning of I-35W and USACE property near Utility Corridor 15 using Link G2; (2) an overhead crossing outside of the designated utility corridors in the northern portion of the USACE property, near the Trailwood subdivision; (3) an underground crossing near the Trailwood subdivision in the same general location as crossing 2; (4) crossings using one of the five designated utility corridors established in the Master Plan; (5) an overhead crossing using an existing Trinity River Authority ("TRA") easement; and (6) overhead crossings outside of the designated utility corridors in the southern portion of the USACE near SH 114. The locations of these alternatives are shown in Exhibit RJM-5.

Q. PLEASE DESCRIBE HALFF'S EVALUATION OF THE OVERHEAD CROSSING IN THE NORTH OF THE USACE PROPERTY NEAR THE TRAILWOOD SUBDIVISION.

A. Halff evaluated an approximately 0.2-mile overhead crossing in northern extents of the USACE property. This area is located adjacent to the Trailwood subdivision in Flower Mound, near Northwest Regional Airport. Because several of the designated utility corridors are located west of this area and south of Northwest Regional Airport, a crossing in this general

location would facilitate reaching those corridors from the existing link network.

Halff's evaluation of this option included a field visit attended by representatives from the USACE, Oncor, Halff, and Senator Tan Parker's office. After this field visit, a follow-up meeting was hosted at the USACE Lake Office which also included the towns of Argyle, Bartonville, Flower mound, and Northlake. During this meeting, the USACE stated that this crossing would not be approved through the outgrant process due to the high quality of the habitat in this area. A follow-up to this communication is included on page A-240 of the Environmental Assessment (Appendix A).

Q. DID ONCOR EVALUATE AN UNDERGROUND CROSSING IN THIS GENERAL AREA?

A. Oncor's engineering team evaluated a potential underground crossing of the USACE property in this general area. Oncor's analysis produced no evidence that undergrounding a project of this ampacity is currently feasible. Even if it were feasible, Oncor's analysis concluded that constructing even a small portion of the Proposed Transmission Line Project underground would cause unacceptable delays in the project schedule and massive increases in project costs. This analysis is described in greater detail in the direct testimony of Oncor witness Ms. Amy L. Zapletal.

Q. PLEASE DESCRIBE THE DESIGNATED UTILITY CORRIDORS ON THE USACE PROPERTY.

A. The designated utility corridors are established in the Master Plan to provide preferred pathways for crossing the USACE property. The Master Plan establishes the utility corridors and their width, ranging from 70 to 140 feet wide, and sets specific restrictions on their use. In some cases, the Master Plan expressly prohibits any further expansion of the corridors. The use of all five corridors is restricted to sub-surface boring (i.e., no overhead facilities), and bore pits are generally not permitted on the USACE property.

Three of the corridors are currently occupied by existing infrastructure, including roads, transmission lines, and underground utilities.

Q. DO ANY OF THE DESIGNATED UTILITY CORRIDORS PROVIDE FEASIBLE ROUTING OPTIONS?

A. Yes. Utility Corridor 15 parallels the east side of I-35W near the Denton Creek crossing. The northern end of Utility Corridor 15 provides an opportunity to cross I-35W using a portion of USACE property that is currently occupied by I-35W, thereby minimizing impacts to the environment to the greatest extent practicable. Communication from the USACE is included on page A-225 of the Environmental Assessment (Appendix A), which suggests that the USACE is amenable to this short crossing.

Q. DO ANY OF THE OTHER DESIGNATED UTILITY CORRIDORS PROVIDE FEASIBLE ROUTING OPTIONS?

A. No. Halff evaluated the potential use of all five designated utility corridors. Utility Corridors 12 through 14 were rendered inaccessible from the existing link network once the USACE denied the crossing in the north near the Trailwood subdivision. The only accessible corridor is Utility Corridor 11, which is currently occupied by a US Highway 377 and two existing transmission lines. This corridor is 100 feet wide, and the Master Plan prohibits it from being expanded beyond 100 feet, including the space currently occupied by US Highway 377. Like the other utility corridors, use of Utility Corridor 11 is restricted to sub-surface boring, and the presence of bore pits is prohibited.

The presence of a highway and existing transmission lines in Utility Corridor 11 creates planning and engineering constraints that are addressed in the direct testimonies of Mr. Naik and Ms. Zapletal, respectively. But even if these constraints were addressed, the Proposed Transmission Line Project would exit Utility Corridor 11 in the highly congested area southwest of the USACE property. This area is bounded by SH 114 to the south and I-35W to the west. It lies just north of the City

of Fort Worth, northeast of Alliance Airport, and east of the Texas Motor Speedway. Within this area are a commercial and industrial park, densely packed residential subdivisions, a mobile home park, numerous oil, gas, and water pipelines, and existing transmission and distribution lines. Given the density of existing development, Halff could not identify any feasible routes through this area. Notably, all five of the designated utility corridors would force the Proposed Transmission Line Project's routing into this area. The specific engineering constraints that preclude a crossing through this area are addressed in Ms. Zapletal's direct testimony.

Q. DOES THE TRA EASEMENT CORRIDOR PROVIDE A FEASIBLE ROUTING OPTION?.

A. No. The TRA easement is a 60-foot-wide easement that runs generally north to south through an ESA on the USACE property. It is occupied by underground sewage and wastewater pipelines 16, 30, and 42 inches in diameter. The location and spacing of the existing pipelines do not allow for the placement of structures within the existing easement area. Even if structures could be placed in the easement, because it is only 60 feet wide, use of this easement area would require clearing an additional 40 feet of ESA to maintain a 100-foot ROW for the Proposed Transmission Line Project. This would require USACE approval through the outgrant process. Furthermore, like Utility Corridor 11, the TRA easement corridor leads to the highly congested area southwest of the USACE property, which does not provide any feasible routing options.

Q. DID HALFF EVALUATE ANY OTHER CROSSINGS OF USACE PROPERTY?

A. Yes. Halff also evaluated potential crossings outside of the designated utility corridors in the far southern portion of the study area that would be necessary to make use of Utility Corridors 11 or 12 or the TRA easement corridor. Both crossings would traverse ESAs, thus requiring USACE approval through the outgrant process. Further, like the other corridors Halff

evaluated, these crossings lead to the dense development southwest of the USACE property, which does not provide any feasible routing options.

Additional details of Halff's coordination with the USACE, and with other parties in regard to the USACE property, are included in sections 4.1, 5.2, and 6.3 and Appendix A (pages A-202 to A-244) of the Environmental Assessment. Specific planning and engineering issues identified during this assessment are detailed in Appendix G of the Environmental Assessment and in the direct testimonies of Oncor witnesses Mr. Naik and Ms. Zapletal.

VI. EVALUATION OF THE PROPOSED ROUTING ALTERNATIVES

Q. PLEASE DESCRIBE THE PROCESS FOLLOWED BY HALFF TO EVALUATE THE ALTERNATIVE ROUTES.

A. Once the preliminary alternative routes were established, the Halff Project Team evaluated them based upon the requirements set forth in Texas Utilities Code § 37.056(c)(4)(A)-(D), 16 TAC § 25.101(b)(3)(B), the Commission's CCN application form requirements, environmental and land use constraints present along each route, and Oncor's routing policies. Section 7.0 of the Environmental Assessment describes the evaluation of the alternative routes. Each professional on the Halff Project Team independently analyzed the routes defined in Table 7-2 of the Environmental Assessment to identify the environmental and land use data for the proposed routing alternatives, which is presented in Table 7-1 (Appendix E) of the Environmental Assessment.

Q. HOW DID HALFF IDENTIFY HABITABLE STRUCTURES IN THE STUDY AREA?

A. Halff reviewed and interpreted aerial photography to identify the location of habitable structures within 500 feet of the centerline of each alternative route, then verified those results during reconnaissance surveys where practical. To account for photographic interpretation limitations such as shadows, tree canopies, and horizontal accuracy of the photography, Halff identified all habitable structures within a measured distance of 520 feet of

the alternative route centerlines. Habitable structures within 520 measured feet of each centerline are documented in Table 7-3 (Appendix E) and shown in Figures 3-1A, 3-1B, 3-1C, and 3-1D of the Environmental Assessment. Habitable structure measurements reflect conditions that were confirmed from public ROW in the January to April 2023 timeframe. However, as additional homes and other planned developments are constructed in the project area, additional habitable structures may ultimately be located within 520 feet of many alternative route links.

Q. BRIEFLY DESCRIBE YOUR UNDERSTANDING OF THE COMMISSION'S POLICY OF PRUDENT AVOIDANCE.

A. Under 16 TAC § 25.101, prudent avoidance is defined as "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort." My understanding of the Commission's policy of prudent avoidance is that the process of routing a proposed transmission line should include consideration of routing options that will reasonably avoid population centers and other locations where people gather. This does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives should be considered.

Q. DO THE ALTERNATIVE ROUTES HALFF EVALUATED ADHERE TO THE COMMISSION'S POLICY OF PRUDENT AVOIDANCE?

A. Yes, all of the alternative routes evaluated by Halff adhere to the Commission's policy of prudent avoidance.

Q. IN DEVELOPING THE ALTERNATIVE ROUTES, DID HALFF ATTEMPT TO FOLLOW PROPERTY BOUNDARIES?

A. Yes. For many reasons, however, paralleling property lines was not possible in all instances. For example, an inverse relationship often exists between following compatible corridors and property boundaries. Given that most existing compatible corridors do not follow property boundaries, as the amount of a proposed route parallel to corridors increases, the

amount of the line parallel to property boundaries will typically decrease. Additionally, in some parts of the study area, the orientation of property boundaries makes paralleling impractical. For example, curved or irregular property lines make it difficult to parallel property boundaries without adding substantial additional length or numerous large angle structures. However, even given these limitations, Halff considered the paralleling of property boundaries and, in the absence of other compatible corridors, attempted to follow property boundaries where appropriate when routing for the Proposed Transmission Line Project.

Q. WHAT ARE THE RESULTS OF HALFF'S INVESTIGATIONS REGARDING THE PROPOSED TRANSMISSION LINE PROJECT?

A. Construction of the Proposed Transmission Line Project should not have a significant impact on existing: (1) physiographic or geologic features/resources; (2) soils and prime farmland; (3) water resources; (4) fish and wildlife species or their habitats and ecosystems; (5) natural resources; (6) land use; or (7) cultural resources. The primary impact to vegetation resulting from the site preparation and construction of the Proposed Transmission Line Project is the potential removal of existing woody vegetation from areas required for the transmission line ROW. However, these impacts can be mitigated by minimizing the length of the transmission line through existing wooded areas and by paralleling existing roads or transmission line corridors wherever possible. Moreover, construction within the ROW will be performed in such a manner as to minimize adverse impacts to vegetation and to retain existing ground cover where feasible. Section 7.0 of the Environmental Assessment describes in detail the results of the alternative route evaluations and any potential impacts for all the routes.

Q. ARE THE ALTERNATIVE ROUTES PROVIDED BY HALFF CONSISTENT WITH THE APPLICABLE PROVISIONS OF THE TEXAS UTILITIES CODE AND THE COMMISSION'S SUBSTANTIVE RULES?

A. Yes. The Halff Project Team, with expertise in different disciplines (e.g., physiography, geology, water resources, soils, vegetation ecology, fish and wildlife ecology, land use/aesthetics, maps/figures/graphics, and cultural resources), delineated and evaluated the potential alternative routes for the Proposed Transmission Line Project based upon environmental and land use conditions present along each potential route, reconnaissance surveys, and the public involvement program. The routes provided to Oncor were evaluated by Halff in accordance with the requirements of Texas Utilities Code § 37.056(c)(4)(A)-(D) and 16 TAC § 25.101. All of the alternative routes provided to Oncor comply with the routing requirements of Texas Utilities Code § 37.056(c)(4)(A)-(D) and 16 TAC § 25.101.

VII. CONCLUSION

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this day personally appeared Russell J. Marusak who, having been placed under oath by me, did depose as follows:

My name is Russell J. Marusak. I am of legal age and a resident of the State of Texas. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.

Russell J. Marusak

SUBSCRIBED AND SWORN TO BEFORE ME on this 5th day of June, 2023.

SHELLY STANCILL
Notary Public, State of Texas
Comm. Expires 03-13-2027
Notary ID 3061698

Notary Public, State of Texas

My Commission Expires

3-13-27

Russell Marusak

Environmental Scientist

Halff Associates, Inc. (Halff)

Education

M.A., Biology – University of North Texas, 2013

B.S., Wildlife and Fisheries Sciences – Texas A&M University, 1995

Mr. Marusak's principle field of experience has been in the project management, conduct, support services, and production of Environmental Assessments (EAs) for a range of projects including electric transmission lines, pipeline utility projects, and habitat restoration projects. Mr. Marusak also has extensive experience as a regulatory specialist, managing projects that require permitting from the U.S Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (§404).

Since joining the staff at Halff, Mr. Marusak has been involved in a variety of environmental planning projects. In addition to routing studies for various linear projects, these activities also have included comprehensive management of corresponding §404 permit applications that have received USACE regulatory approval, as well as coordination with north central Texas USACE Lake Offices for projects that cross either USACE property and/or USACE flowage easement.

Mr. Marusak's representative project experience includes the following:

Ivy League 138 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a 138 kV transmission line project in Collin County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project, which included potential crossings of USACE lands.

Riverton—Kyle Ranch and Kyle Ranch—Quarry Field 138 kV Transmission Line Projects, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for two concurrent 138 kV transmission line project in Loving and Reeves Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line projects.

Sand Lake—Solstice 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 345 kV transmission line project in Pecos, Reeves, and Ward Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Horseshoe Springs—Owl Hills and Owl Hills—Tunstill 138 kV Transmission Line Projects, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for two

concurrent 138 kV transmission line project in Culberson, Reeves, and Loving Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line projects.

Odessa—Moss—Riverton 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 345 kV transmission line project in Crane, Ector, Loving, Reeves, Ward and Winkler Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Riverton—Sand Lake 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 37-42 -mile long 345 kV transmission line project in Loving, Reeves, and Ward Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Tunstill 138kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 5-6 -mile long 138 kV transmission line project in Reeves County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Balding POD 138 kV Transmission Line Project, Oncor Electric Delivery Company- Project Manager for EA in support of a 2.5-mile single route 138 kV transmission line project in Winkler County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Littman—Philips Andrews 138 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for EA and Alternative Routing Analysis for a proposed 11-mile long 138 kV transmission line project in Andrews County, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

New Bethel 345 kV Transmission Line Project, Oncor Electric Delivery Company - Project Manager for ongoing EA and Alternative Routing Analysis for a proposed 12-27 mile long 345 kV transmission

line project in Navarro, Henderson, Freestone, and Anderson Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Krum West–Anna 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 40-100 -mile long 345 kV transmission line project in Cooke, Grayson, Collin, and Denton Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Riley–Krum West 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 140-mile long 345 kV transmission line project in Wilbarger, Wichita, Archer, Clay, Jack, Montague, Cooke, Wise, and Denton Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Riley–Bowman 345 kV Transmission Line Project, Oncor Electric Delivery Company – Project Manager for EA and Alternative Routing Analysis for a proposed 38-mile long 345 kV transmission line project in Archer, Wichita, and Wilbarger Counties, Texas. Project coordinator of a multi-disciplinary team of scientists including archeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impacts for the proposed transmission line project.

Venus–Liggett 345 kV Transmission Line Project, TXU Electric Delivery Company – Managed and prepared an EA and Alternative Routing Analysis for a proposed 32-mile long 345 kV transmission line project in Dallas, Tarrant, Johnson, and Ellis Counties, Texas. Project coordinator of a multidisciplinary team of scientists including archaeologist, biologist, ecologist, landuse planners, etc. to evaluate the environmental and land use impact and select a preferred route for the proposed transmission line project.

345 kV Transmission Line Easement across The Greenbelt below Ray Roberts Lake – Provided technical support in the preparation of an EA for multiple transmission line alternatives across USACE property pursuant to National Environmental Policy Act (NEPA) requirements under the Federal Non-Recreational Outgrant Policy.

Park Boulevard Extension, Collin County, Texas – Provided technical support in the preparation of a Preliminary Information Document and Detailed Information Report for construction of a new roadway facility across USACE property (Lavon Lake) pursuant to

NEPA requirements under the Federal Non-Recreational Outgrant Policy.

Shady Shores Road Improvements – Provided technical assistance to project team as it related to road improvements within an existing allocated easement across USACE property (Lewisville Lake). Served as a liaison with the USACE Lake Office Staff in the early planning stages of the project as it related to Non-Recreational Outgrant Policy.

Detailed Project Report and Environmental Assessment for the Lake Lewisville Section 1135 Ecosystem Restoration Project, USACE Fort Worth District– Managed and prepared an EA for a proposed habitat restoration project in Denton and Collin County, Texas. The EA and environmental studies included a meeting with the USACE Forth Worth District and United States Fish and Wildlife Service (USFWS) Arlington Field Office to discuss a scope to prepare the EA; incremental cost analysis using USACE software tool; ecological investigations including a USFWS Habitat Evaluation Procedure; general habitat survey; landscape trail design; and hazardous materials investigation. A subsequent Finding of No Significant Impact (FONSI) was issued.

Detailed Project Report and Environmental Assessment for the Middle Brazos River Section 206 Ecosystem Restoration Project, USACE Fort Worth District – Managed and prepared an EA for a proposed habitat restoration project in the north Bosque River Watershed. The EA and environmental studies included a meeting with the USACE Forth Worth District and USFWS Arlington Field Office to discuss a scope to prepare the Environmental Assessment; ecological investigations including a USFWS Habitat Evaluation Procedure; general habitat survey; and coordinating general civil design.

Licenses, Registrations, Seminars

ISA Certified Arborist TX #3252A

8-hour "Interim Regional Supplement to the Corps of Engineers Wetland Delineation: Great Plains Region" Training Course

40-Hour OSHA Training, 29 CFR 1910.120

40-hour 1998 Wetland Delineation Training Course

CHAPTER 37. CERTIFICATES OF CONVENIENCE AND NECESSITY.

Subchapter B. CERTIFICATE OF CONVENIENCE AND NECESSITY.

Sec. 37.056. GRANT OR DENIAL OF CERTIFICATE.

(a) The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public.

(b) The commission may:

(1) grant the certificate as requested;

(2) grant the certificate for the construction of a portion of the requested system, facility, or extension or the partial exercise of the requested right or privilege; or

(3) refuse to grant the certificate.

(c) The commission shall grant each certificate on a nondiscriminatory basis after considering:

(1) the adequacy of existing service;

(2) the need for additional service;

(3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and

(4) other factors, such as:

(A) community values;

(B) recreational and park areas;

(C) historical and aesthetic values;

(D) environmental integrity;

(E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted, including any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region; and

(F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

(c-1) In considering the need for additional service under Subsection (c)(2) for a reliability transmission project that serves the ERCOT power region, the commission must consider the historical load, forecasted load growth, and additional load currently seeking interconnection.

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region, that is not necessary to meet state or federal reliability standards, and that is not included in a plan developed under Section 39.904(g). The criteria must include a comparison of the estimated cost of the transmission project for consumers and the estimated congestion cost savings for consumers that may result from the transmission project, considering both current and future expected congestion levels and the transmission project's ability to reduce those congestion levels. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

(e) A certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility may be granted only to the owner of that existing facility. If a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity shall be certificated to build, own, or operate the new facility in separate and discrete equal parts unless they agree otherwise.

(f) Notwithstanding Subsection (e), if a new transmission line, whether single or double circuit, will create the first interconnection between a load-serving station and an existing transmission facility, the entity with a load-serving responsibility or an electric cooperative that has a member with a load-serving

responsibility at the load-serving station shall be certificated to build, own, or operate the new transmission line and the load-serving station. The owner of the existing transmission facility shall be certificated to build, own, or operate the station or tap at the existing transmission facility to provide the interconnection, unless after a reasonable period of time the owner of the existing transmission facility is unwilling to build, and then the entity with the load-serving responsibility or an electric cooperative that has a member with a load-serving responsibility may be certificated to build the interconnection facility.

(g) Notwithstanding any other provision of this section, an electric utility or municipally owned utility that is authorized to build, own, or operate a new transmission facility under Subsection (e) or (f) may designate another electric utility that is currently certificated by the commission within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by the commission by rule.

(h) The division of any required certification of facilities described in this section shall apply unless each entity agrees otherwise. Nothing in this section is intended to require a certificate for facilities that the commission has determined by rule do not require certification to build, own, or operate.

(i) Notwithstanding any other provision of this section, an electric cooperative may be certificated to build, own, or operate a new facility in place of any other electric cooperative if both cooperatives agree.

(V.A.C.S. art. 1446c-0, secs. 2.255(b), (c).) (Amended by Acts 2003, 78th Leg., R.S., ch. 295 (HB 2548), § 2 (added subd. (c)(4)(F)); Acts 2011, 82nd Leg., R.S., ch. 949 (HB 971), § 2(a) (added subsec. (d)); Acts 2019, 86th Leg. R.S., ch. 44 (SB 1938), § 4 (added subsecs. (e), (f), (g), (h), and (i)) Acts 2021, 87th Leg., R.S., ch. 198 (HB 1510), § 3 (amended subd. (c)(4)); Acts 2021, 87th Leg., R.S., ch. 876 (SB 1281), § 2 (added subsec. (c-1) & amended subsec. (d)).)

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§25.101. Certification Criteria.

(a) **Definitions.** The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) **Construction or extension** -- Does not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way must not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction or extension is necessary for the service, accommodation, convenience, or safety of the public.

(2) **Generating unit** -- Any electric generating facility. This section does not apply to any generating unit that is ten megawatts or less and is built for experimental purposes only.

(3) Habitable structures -- 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.

(4) Municipal Power Agency (MPA) -- Agency or group created under Texas Utilities Code, Chapter 163 – Joint Powers Agencies.

(5) Municipal Public Entity (MPE) -- A municipally owned utility (MOU) or a municipal power agency.

(6) Prudent avoidance -- The limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.

(7) Tie line -- A facility to be interconnected to the Electric Reliability Council of Texas (ERCOT) transmission grid by a person, including an electric utility or MPE, that would enable additional power to be imported into or exported out of the ERCOT power grid.

(b) **Certificates of convenience and necessity for new service areas and facilities.** Except for certificates granted under subsection (e) of this section, the commission will grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission will render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

(1) **Change in service area**. Any certificate granted under this section must not be construed to vest exclusive service or property rights in and to the area certificated.

(A) Uncontested applications: An application for a certificate under this paragraph must be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested;

(ii) all owners of land that is affected by the change in service area and all customers in the service area being changed have been given direct mail notice of the application; and

(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions must be approved administratively within 45 days of the filing of the application provided that:

(i) every utility whose certificated service area is affected agrees to the change;

(ii) all customers within the affected area have given prior consent; and

(iii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(2) **Generation facility.**

(A) In a proceeding involving the purchase of an existing electric generating facility by an electric utility that operates solely outside of ERCOT, the commission will issue a final order on a certificate for the facility not later than the 181st day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(B) In a proceeding involving a newly constructed generating facility by an electric utility that operates solely outside of ERCOT, the commission will issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(C) An electric utility operating solely outside of the ERCOT region may, but is not required to, obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

(3) **Electric transmission line.** All new electric transmission lines must be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports). This reporting requirement is also applicable to new electric transmission lines to be constructed by an MPE seeking to directly or indirectly construct, install, or extend a transmission facility outside of its applicable boundaries. For an MOU, the applicable boundaries are the municipal boundaries of the municipality that owns the MOU. For an MPA, the applicable boundaries are the municipal boundaries of the public entities participating in the MPA.

(A) **Determination of need**:

(i) **Economic projects.** Except as otherwise stated in this subparagraph, the following must be met for a transmission line in the ERCOT region. The applicant must present an economic cost-benefit study that analyzes the transmission project under a congestion cost savings test and a production cost savings test. The commission will give great weight to such a study if it is conducted by the ERCOT independent system operator. Adequately quantifiable and ongoing direct and indirect costs and benefits to the transmission system attributable to the project may be included in the cost-benefit study.

(I) **Congestion cost savings test.** ERCOT, in consultation with commission staff, must develop a congestion cost savings test.

(-a-) The congestion cost savings test must include an analysis of whether the levelized ERCOT-wide annual congestion cost savings attributable to the proposed project are equal to or greater than the average of the first three years annual revenue requirement of the proposed project of which the transmission line is a part.

(-b-) Prior to the effective date of the test developed by ERCOT under this subclause ERCOT may immediately, without updating its current protocols, utilize the generator revenue reduction test, effective Dec. 1, 2011 under

ERCOT Nodal Protocols §3.11.2(6), as the congestion cost benefit test required under this clause. ERCOT may continue to rely upon completed calculations using the generator revenue reduction test to evaluate ongoing applications after the effective date of the test developed under this subclause.

(II) **Production cost savings test.** The production cost savings test must include an analysis of whether the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part.

(III) Economic cost-benefit analysis must be studied for the projected in-service date of the project using the study case identified in the ERCOT planning guide.

(IV) ERCOT may recommend, and the commission may approve, a transmission line in the ERCOT region that demonstrates a savings under either a congestion cost savings test or a production cost savings test.

(ii) **Reliability projects.**

(I) The requirements of clause (i) of this subparagraph do not apply to an application for a transmission line that is necessary to meet state or federal reliability standards, including: a transmission line needed to interconnect a transmission service customer or end-use customer; or needed due to the requirements of any federal, state, county, or municipal government body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air or water quality.

(II) For a transmission line not addressed by clause (i) of this subparagraph, the commission will consider, among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust wholesale competition. When evaluating reliability for a proposed project in the ERCOT region, the commission will consider and any review conducted by ERCOT must incorporate the historical load, forecasted load growth, and additional load currently seeking interconnection. The forecasted load growth and additional load currently seeking interconnection must be substantiated by quantifiable evidence of projected load growth. The commission will give great weight to:

(-a-) the recommendation of an organization that meets the requirement of PURA §39.151; and/or

(-b-) written documentation provided by a transmission service provider to ERCOT that the transmission line is needed to interconnect transmission service or retail customers.

(iii) **Resiliency.** ERCOT may recommend, and the commission may approve, a transmission project that is submitted as an economic or reliability project and does not demonstrate sufficient economic savings or reliability benefits to merit approval on those grounds if ERCOT determines the line would

address a resiliency issue identified in the grid reliability and resiliency assessment required by subparagraph (E) of this paragraph. In determining whether to approve such a project the commission will consider:

(I) the margin by which the transmission project was unable to demonstrate sufficient economic savings or reliability benefits to merit approval on those grounds;

(II) whether the resiliency benefits the transmission project would provide by reducing the impacts to customers of potential outages caused by regional extreme weather scenarios are sufficient to compensate for the project's inability to demonstrate sufficient economic savings or reliability benefits to merit approval on those grounds.

(III) the cost effectiveness of the transmission project's ability to address the resiliency issue identified by ERCOT compared to other possible solutions,

(IV) other factors listed in PURA §37.056(c), as appropriate.

(B) **Routing**: An application for a new transmission line must address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line must be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors must be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i) whether the routes parallel or utilize existing compatible rights-of-way for electric facilities, including the use of vacant positions on existing multiple-circuit transmission lines;

(ii) whether the routes parallel or utilize other existing compatible rights-of-way, including roads, highways, railroads, or telephone utility rights-of-way;

(iii) whether the routes parallel property lines or other natural or cultural features; and

(iv) whether the routes conform with the policy of prudent avoidance.

(C) **Uncontested transmission lines**: An application for a certificate for a transmission line will be approved administratively within 80 days from the date of filing a complete application if:

(i) no motion to intervene has been filed or the application is uncontested; and

(ii) commission staff has determined that the application is complete and meets all applicable statutory criteria and filing requirements, including, but not limited to, the provision of proper notice of the application.

(D) **Projects deemed critical to reliability**. Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system will be considered by the commission on an expedited basis. The commission will render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.

(E) **Grid reliability and resiliency assessment.** ERCOT must conduct a biennial assessment of the ERCOT power grid's reliability and resiliency in extreme weather scenarios. Each assessment must:

(i) consider the impact of different levels of thermal and renewable generation availability;

(ii) identify areas of the state that face significant grid reliability and resiliency issues, taking into account the impact of potential outages caused by regional extreme weather scenarios on customers, including multiple element outage analysis when appropriate, and

(iii) recommend transmission projects that may increase the grid's reliability or resiliency in extreme weather scenarios.

(4) **Tie line**. An application for a tie line must include a study of the tie line by ERCOT. The study must include, at a minimum, an ERCOT-approved reliability assessment of the proposed tie line. If an independent system operator intends to conduct a study to evaluate a proposed tie line or intends to provide confidential information to another entity to permit the study of a proposed tie line, the independent system operator must file notice with the commission at least 45 days prior to the commencement of such a study or the provision of such information.

(c) **Projects or activities not requiring a certificate**. A certificate, or certificate amendment, is not required for the following:

(1) An extension of facilities as described in PURA §37.052(a) and (b);

(2) A new electric high voltage switching station, or substation;

(3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies should proceed without delay or prior approval of the commission and must be reported to the commission in accordance with §25.83 of this title;

(4) The construction or upgrading of distribution facilities within the electric utility's service area;

(5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs must be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:

(A) The modification, construction, or extension of a transmission line that connects existing transmission facilities to a substation or metering point provided that:

(i) the transmission line modification, construction, or extension does not exceed:

(I) three miles if the line connects to a load-serving substation or metering point; or

(II) two miles if the line connects to a generation substation or metering point; and

(ii) all rights-of-way necessary for the modification, construction, or extension have been acquired, and

(iii) all landowners whose property is directly affected by the transmission line, as defined in §22.52(a)(3) of this title, have given written consent for the modification, construction, or extension. If the transmission line

modification, construction, or extension does not exceed one mile to provide service to a substation or metering point, written consent is only required by landowners whose property is crossed by the transmission line.

(B) The rebuilding, replacement, or respacing of structures along an existing route of the transmission line; upgrading to a higher voltage not greater than 230 kV; bundling of conductors or reconductoring of an existing transmission facility, provided that:

(i) no additional right-of-way is required; or

(ii) if additional right-of-way is required, all landowners of property crossed by the electric facilities have given prior written consent.

(C) The installation, on an existing transmission line, of an additional circuit not previously certificated, provided that:

(i) the additional circuit is not greater than 230 kV; and

(ii) all landowners whose property is crossed by the transmission facilities have given prior written consent.

(D) The relocation of all or part of an existing transmission facility due to a request for relocation, provided that:

(i) the relocation is to be done at the expense of the requesting party; and

(ii) the relocation is solely on a right-of-way provided by the requesting party.

(E) The relocation or alteration of all or part of an existing transmission facility to avoid or eliminate existing or impending encroachments, provided that all landowners of property crossed by the electric facilities have given prior written consent.

(F) The relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air and water quality, provided that:

(i) all landowners of property crossed by the electric facilities have given prior written consent; and

(ii) the relocation, alteration, or reconstruction is responsive to the governmental request.

(6) Upgrades to an existing transmission line by an MPE that do not require any additional land, right-of-way, easement, or other property not owned by the MOU;

(7) The construction, installation, or extension of a transmission facility by an MPE that is entirely located not more than 10 miles outside of an MOU's certificated service area that occurs before September 1, 2021; or

(8) A transmission facility by an MOU placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, an MOU was contractually obligated to purchase at least 190 megawatts of capacity.

(d) **Standards of construction and operation.** In determining standard practice, the commission will be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility must construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(1) The standards of construction apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.

(2) For electric transmission line construction requiring the acquisition of new rights-of-way, an electric utility must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. For this purpose, new construction of above-ground structures does not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. A utility may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

(3) Measures must be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures must be adapted to the specifics of each project and may include such requirements as:

(A) selective clearing of the right-of-way to minimize the amount of flora and fauna disturbed;

(B) implementation of erosion control measures;

(C) reclamation of construction sites with native species of grasses, forbs, and shrubs; and

(D) returning site to its original contours and grades.

(e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions prevail for certification purposes:

(1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, must be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.

(2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, must be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.

(3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, must be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

(f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and remains in force until further order of the commission.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

(g) **Certification forms.** All applications for certificates of convenience and necessity must be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

(h) **Commission authority**. Nothing in this section is intended to limit the commission's authority to recommend or direct the construction of transmission under PURA §§35.005, 36.008, or 39.203(e).

CHAPTER 17

NON-RECREATION OUTGRANT POLICY

17-1. Purpose. The purpose of this guidance is to establish a consistent, nationwide policy that will be applied to evaluate non-recreational real estate outgrant requests for use of Civil Works lands and waters operated and maintained by the Corps. This guidance was developed jointly by the Operations and Real Estate Communities of Practice. The Corps intent is to meet legitimate needs for the use of project lands and waters operated and maintained by the Corps while sustaining natural resources and protecting authorized project purposes. Depending on specific project legislation, project purposes may include navigation, hydropower, flood control, recreation, water supply, and low flow augmentation. Additional statutes can assign mission responsibilities, such as fish and wildlife and endangered species management.

17-2. Applicability. This policy applies to all new non-recreational outgrant requests for use of Corps fee owned lands and waters by the public (Federal, State and local), federally recognized Indian tribes, private sector, quasi-public entities, or individuals at Civil Works water resources projects operated and maintained by the Corps. All requests submitted prior to the effective date of this policy will be processed in accordance with current District policies. Existing outgrants are grandfathered under this policy. Proposals to modify or renew existing outgrants will also be evaluated for policy compliance under this guidance. All new proposals must comply with paragraph 17- 9 - Evaluation Criteria, Appendix E - General Outgrant Application Information, and as applicable, Appendix F - National Environmental Policy Act Guidance, Appendix G - Mitigation Guidance, and Appendix H - Additional Guidance For Specific Outgrant Applications. It is recommended that designated corridors be established in Project Master Plans where feasible and new proposals should utilize these corridors where they exist. This policy is not applicable to oil, gas, or mineral exploration or extraction. This policy is also not applicable to the licensing of hydropower facilities by non-federal interests on Corps administered Civil Works Projects. That program is regulated by the Federal Energy Regulatory Commission. However, full compliance with the associated non-federal hydropower requirements defined in ER 1110-1-1454 (Corps Responsibilities for Non-federal Hydroelectric Power Development under the Federal Power Act) is required. Specific guidance for evaluating antenna sitting requests is contained in 41 CFR 102-79.70-79.100. The type of outgrant (license, lease, or easement) to be issued in association with the request will depend on the proposed use of the Federal property (i.e. whether a tower or other facilities will be constructed on Federal property; or solely placement of an antenna).

17-3. Policy. The primary rationale for authorizing any future non-recreational outgrant request for use on Corps lands or waters will be one of two reasons: there is no viable alternative to the activity or structure being located on Civil Works land or waters; or, there is a direct benefit to the government. Examples of instances of no viable alternative include but are not limited to: cross-country utilities, pipelines, or roadways that must cross projects, public water intakes, or

commercial mooring cells in a navigable waterway. If a request meets one of these two criteria, it must be evaluated in light of compatibility with authorized project purposes, compliance with statutory and regulatory requirements, including environmental and cultural resource laws, cumulative impacts, and overall long-term public interest factors. The impacts associated with an individual action or the accumulated impact of a series of actions must not adversely impact the capability of the project to generate the benefits for which the project was congressionally authorized, constructed, and is operated. The Corps shall coordinate and/or consult with federally recognized Indian tribes, when reservation lands are involved. Public or private structures or activities that are not dependent on use of, or location on, Civil Works lands and waters, such as schools, fire houses, and hospitals are prohibited unless no viable alternative is proven available. Permanent commercial ventures and private residences are prohibited. Any private exclusive use of Civil Works lands and waters not specifically authorized by ER 1130-2-406 is prohibited.

17-4. Consideration. In most instances, an applicant will be required to pay the fair market value or consideration for use of Civil Works lands and or waters: however, consideration may be waived for outgrants that benefit the general public or the Corps if not explicitly mandated by statute. Consideration may be monetary or non-monetary. However, in-kind consideration is not authorized for leases or licenses granted under 16 U.S.C. §460d.

17-5. Mitigation. Mitigation guidelines can be found in Appendix G. Wherever possible, applicants requesting use of Corps fee-owned lands or waters generally will be required to mitigate for adverse impacts to ensure that public resources suffer no net loss of value, post-construction. This may include statutory and/or non statutory mitigation actions. However, only non-statutory mitigation may be waived as defined in Appendix G, paragraph 4. Where required, a Mitigation Plan must be prepared and approved by the District Engineer prior to issuance of the outgrant instrument. Approved mitigation plans shall become a condition of and added as an addendum to the applicable real estate instrument.

17-6. Administrative Expense. In addition to consideration and mitigation, the applicant will be required to pay administrative expenses for the outgrant as authorized under 10 U.S.C. §2695 and further detailed in the Real Estate regulations. Any administrative fees received at the project will be handled in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations," dated 17 September 2010.

17-7. Storage Capacity. By law, every Corps water resource project has designated missions (e.g., flood control, hydropower, navigation, water supply, etc.). To ensure compliance with law, the Corps is required to maintain the ability to store water to support these missions. The amount of water storage availability for each mission is identified in a congressionally approved Water Allocation Report. Changes to these amounts may not be done without a re-allocation study and an approved amended Water Allocation Report. Proposals that

impact water storage availability for any mission will be required to offset the impact. This includes impacts up to the maximum storage of the reservoir (see Definitions Section 17-8d.).

17-8. Definitions.

a. Consideration - The fair market value received for the outgrant (monetary and non monetary, such as in-kind improvements or services). Administrative expenses and mitigation requirements cannot be applied towards consideration. Administrative expenses and mitigation cost are considered as an additional expense to the fair market value of the outgrant.

b. Designated Corridors - A parcel of land with fixed boundaries that has been identified in the Project Master Plan or Operational Management Plan as being the preferred location for future outgrants (e.g., public utilities, roadways, pipelines, etc.) or proposed modifications to existing outgrants suitable to accommodate compatible types of outgrants.

c. Freeway - A road that has controlled access and is designed to link urban areas. Freeways are designed for high volumes of traffic, use grade separations at all intersections, have design speeds of 50-65 miles per hour, and no median access. Freeways include expressways, interstates, and toll-roads.

d. Maximum Storage - The total storage space in a reservoir (in acre feet) below the maximum attainable water surface elevation (crest of the dam or top of the flood pool), including any surcharge storage (capacity above the maximum operating level of reservoir).

e. Operational Management Plan - A separate document from the Project Master Plan that outlines in detail the specific operation and administration requirements for natural resources and park management consistent with the approved Project Master Plan. Management strategies consistent with authorized project purposes, approved resource use objectives, and land designations will be established in the document. The document will be used as a working tool for the overall management of the project on a day to day basis.

f. Non-Statutory Mitigation - The definition of mitigation is broadened to include "all measures necessary to make the Corps project whole." While specific statutes may not address these measures, when project damages are incurred, appropriate mitigation actions should be provided to address those damages/impacts. Non-statutory mitigation actions may take the form of actions to restore project value, such as replacing trees, soil/bank stabilization, and providing new, relocated, or replacement facilities.

g. Outgrant - Authorizes the right to use Army controlled real property. It is a written legal document that establishes the timeframe, consideration, conditions, and restrictions on the use of Army property. For the purposes of this policy, an outgrant is typically a lease, easement, or license authorized by 16 U.S.C.460d, 10 U.S.C. 2667, 10 U.S.C. 2668, 30 U.S.C. 185 or other statutes and the general administrative authority of the Secretary of the Army (reference ER 405-1-12 Chapter 8 (Real Property Management) and the forthcoming ER 405-1-80 (Management and Outgrant Programs).

h. Project Level Representative - Person responsible for day-to-day operations at a project or area level, such as Lake Manager, Operations Project Manager, Park Manager, Resource Manager, etc.

i. Project Master Plan - A conceptual document guiding Corps responsibilities pursuant to Federal laws and regulations to preserve, conserve, develop, restore, maintain, and manage project lands, waters, and associated resources. The primary goals of a Master Plan are to prescribe an overall land and water management plan; to include, resource use objectives, land use classifications, and associated design and management concepts. The plan addresses all resources including, but not limited to, water, fish and wildlife, vegetation, cultural, aesthetic, interpretive, recreational, and mineral. The Master Plan also considers the land (fee, easement, or other interest) acquired for project operations and outgranted lands.

j. Regional Arterial Road - A road that links multiple communities within two or more counties, and provides continuous and mostly uninterrupted traffic flow. Regional arterial roads are designed for high volumes of traffic, design speeds of 45-50 miles per hour, and use partially controlled access, grade separation at isolated intersections and limited curb and median access controls to facilitate traffic flow.

k. Statutory Mitigation - Statutory mitigation is driven by statutes, executive orders, and regulations that require mitigation to correct negative impacts to the environment based on a proposed action. For example, § 33 CFR 320.4(r) and 33 CFR 332 detail the required mitigative actions when wetlands or navigable waterways (e.g., discharge of dredged or fill material into the water) are impacted.

l. Viable Alternative – Other lands and/or waters (not under Corps management) that can meet the intended objective of the request. Factors such as cost impacts (e.g. escalation) to the request or the perceived availability underutilized or unused Corps lands or waters will not have bearing on the determination of viability.

17-9. Evaluation Criteria. All new requests for use or revisions to existing outgrants must be in writing and reviewed by a interdisciplinary district team consisting, at a minimum, of a Project Level Representative, Real Estate, and Operations. Other legal/technical elements should be

included as appropriate (Counsel, Engineering, Planning, Regulatory, etc.). Final approval rests with the District Commander unless such authority is specifically delegated to an appropriate subordinate level to accommodate a minor request. In the rare circumstance that exceptions to this policy may be warranted, proposals for non-recreational use will first be forwarded to the MSC Commander. If the exception is not resolved at the MSC level, as a last resort, the request will be forwarded to HQUSACE (CECW-CO-N and appropriate Regional Integration Team) for resolution and the Director of Civil Works (if needed).

a. Although these evaluation criteria are integral to any land availability determination, the preparation of the Report of Availability (ROA) will follow the processes established in ER 405-1-12, Chapter 8 (Real Property Management), AR 405-80 (Management of Title and Granting Use of Real Property), the forthcoming ER 405-1-80 (Management and Outgrant Programs), ER 200-2-2 (Procedures for Implementing NEPA) and ER 200-2-3 (Environmental Quality-Environmental Compliance Policies). In addition, the evaluation will be consistent with ER 1130-2-540 (Environmental Stewardship Operations and Maintenance Policies), ER 1130-2-550 (Recreation Operations and Maintenance Policies), and ER 1130-2-406 (Shoreline Management at Civil Works Projects).

b. The team will evaluate requests using all of the following criteria:

(1) Consistent with project purposes

(2) Viable alternatives to utilization of public lands and waters

(3) Consistent with complete land use classifications and resource objectives identified in the approved Project Master Plan (or supplement thereto)

(4) Consistent with applicable evaluation contained in the enclosures

(5) In the public interest

(6) Demonstrated need

(7) Technical capabilities

(8) Financial capabilities (consideration, mitigation and administrative expenses)

17-10. Implementation. This policy is effective immediately and supersedes any existing project, district, or MSC policy on evaluating proposed outgrants for non-recreation purposes. District policies may be developed that supplement this policy in order to further define evaluation roles and responsibilities within the district. However, district policies will not be in conflict with this policy.

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APPENDIX E

General Outgrant Application Information

E-1. Preliminary Information. The applicant must provide the preliminary information requested below (a-h) to the Project Level Representative. The initial submission will be evaluated by the Project Level Representative and district team to determine if a proposal is appropriate for location on Government property. Administrative cost for the evaluation of any application documents (preliminary, detailed, supporting) will be paid by the applicant prior to the start (up front) of the review process by project and District personnel. Any administrative fees received at the project will be handled in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations," dated 17 September 2010.

a. Identify Applicant:

(1) Name, address, and phone number of applicant. The application must be submitted by the entity to whom the outgrant will be assigned.

(2) Point of contact for processing (e.g. City Manager, Mayor, Commissioner, etc)

b. Describe the structure or facility.

c. Identify the purpose, need and objective (benefits, enhancements, statutory requirements) for the structure or facility.

d. Justify placement of structure or facility on government property. The justification should include a description of all alternative locations and routes that were investigated, including routes and locations off of project lands. The description will also include rationale for why the other alternatives were not selected. Cost factors alone will not affect the determination of viability.

e. State the duration for which the proposed outgrant is requested. Include the duration of the temporary license if one is needed (usually 1 year).

f. Generally describe the location and dimensions of the requested outgrant area to include a preliminary site plan. NOTE: Outgrants should be placed in the footprint of existing project outgrants or within designated corridors where possible.

g. Provide basic construction methods and timeline.

h. Anticipated impacts (environmental, cultural resource, social, etc.).

E-2. Detailed Information. If upon review of an initial request, the Corps determines that the requested activity may be feasible and will be considered further, the information below must be provided as required. This information will be provided to the Project Level Representative and be evaluated by the district team. Additional information may be requested based on the nature of the proposed activity. A Corps determination will be made as to what environmental documentation is required for the proposed action. Preliminary information concerning administrative fees, consideration and mitigation will be provided to the applicant.

a. Coordination.

(1) Provide concurrence from third parties who may be affected by the structure or facility (e.g. other existing outgrants).

(2) Provide other agency concurrence regarding legal or regulatory requirements where necessary (e.g. responsible State natural resources and utility entities).

NOTE - A temporary real estate instrument will be required prior to conducting any on-the-ground activities (for surveys, ground disturbance, soil and groundwater testing). An Archeological Resources Protection Act (ARPA) permit may also be required.

b. Description of Proposal.

(1) Provide preliminary plans and specifications for the proposed outgrant. Include construction areas, if applicable.

(2) Provide a map(s) which includes the following:

(a) A legal description (location, identification of parcel) of the proposal (reference to a known Corps of Engineers property monument is encouraged). This description can also be provided separately;

(b) The upper guide contours and elevation intervals appropriate to the terrain as applicable, if available

(c) Identification of the project property line (Federal government property line) in relation to the proposal;

(d) Any structures that will be affected (e.g.: fences, roads, monuments, gates, intake structures, natural and environmental resources, etc.); and

(e) The estimated acreage of the proposed outgrant.

(3) Stake/flag the boundary or centerline of the outgrant if requested

c. NEPA - If NEPA documentation is required from the applicant, see Appendix F.

d. Mitigation. Non-statutory mitigation is generally required for impacted public resources. Mitigation often requires, but is not limited to, wildlife habitat improvement and vegetative plantings on the area of actual disturbance and on additional areas or other forms of restitution. Statutory mitigation may also be required if the proposed work involves applicable statutes, executive orders, regulations, and guidance concerning impacts of a proposed action. For example, a discharge of dredged or fill material into waters of the U.S typically requires a Section 404 permit (Clean Water Act) and associated mitigation. See Appendix G for additional mitigation guidance.

e. Storm Water Requirements. In accordance with State, County and/or local laws, various Districts within the Corps do not allow outgrants for storm water facilities. For those Districts that allow outgrants for storm water facilities, the applicant must also contact the applicable State, County and/or local agency responsible for storm water permits. The applicant must provide documentation of the contact, a Notice of Intent and evidence that a permit is being pursued (if required). In addition, the applicant shall provide a Storm Water Pollution Prevention Plan when required if earth-disturbing activities are to be performed. This plan shall include the means by which erosion and sedimentation will be controlled and monitored to protect the drainage courses.

f. Storage Capacity. In general, Corps policy is no net loss of maximum storage capacity. This generally includes calculating amounts of cut and fill which could impact storage capacity.

g. Landscaping and Revegetation. As part of site stabilization and restoration, the applicant in most cases will be required to reestablish vegetation after construction. The applicant must demonstrate that the seed and vegetative plantings proposed for revegetation are native species to the area and not listed as an invasive species on a Federal or applicable State list.

NOTE: Applicants, please review Appendix H for guidance addressing additional requirements for specific types of outgrants.

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APPENDIX F

National Environmental Policy Act (NEPA) Guidance

F-1. Policy. Comprehensive guidance on the implementation of NEPA for the Civil Works Program is found in ER 200-2-2 and the NEPA implementing regulations are found at 40 CFR Parts 1500-1508. Generally, outgrant proposals will require an Environmental Assessment (EA) to comply with NEPA, however each proposal should be assessed in light of ER 200-2-2 and the NEPA implementing regulations to determine the correct level of analysis. In some cases the action may qualify for a categorical exclusion and others may require an Environmental Impact Statement. Additional information concerning NEPA can be found at http://ceq.hss.doe.gov/.

F-2. Preparation of Environmental Compliance Documents. Environmental compliance documents, including those required for NEPA, may be completed by the Corps or the applicant. If completed by the Corps, the applicant must pay for the expenses to be incurred prior to the work being initiated. If completed by the applicant, the applicant must pay for the expenses to be incurred by the Corps prior to the Corps review by project and district personnel. Any administrative fees received will be handled in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations" dated 17 September 2010 and the Real Estate regulations. Regardless of what entity prepares the environmental compliance documentation, the Corps is responsible for its content and must independently review all information contained therein.

F-3. Content. For outgrant proposals requiring an Environmental Assessment (EA) the following information is generally required by NEPA. Additional information may be requested depending on the nature of the proposal. An EA facilitates the decision process regarding the proposed action and alternatives.

a. SECTION 1. Authority, Purpose, And Scope provides the authority for the proposed action, summarizes the project purpose, provides relevant background information, and describes the scope of the EA.

b. SECTION 2. Alternatives examines alternatives for implementing the proposed action.

c. SECTION 3. Proposed Action describes the recommended action.

d. SECTION 4. Affected Environment describes the existing environmental and socioeconomic setting.

e. SECTION 5. Environmental Impacts Of The Proposed Action identifies the potential environmental and socioeconomic effects of implementing the proposed action and alternatives.

f. SECTION 6. Mitigation Plan summarizes mitigation actions required to enable a Finding of No Significant Impact for the proposed alternative.

g. SECTION 7. Federal, Tribal, State, And Local Agency Coordination provides a listing of individuals and agencies consulted during preparation of the EA.

h. SECTION 8. References provides bibliographical information for cited sources.

i. SECTION 9. Applicable Environmental Laws And Regulations provides a listing of environmental protection statutes and other environmental requirements.

j. APPENDICES:

A Correspondence

B Section 404 Permit (if required)

C Fish and Wildlife Coordination/Correspondence

D Cultural Resources Coordination/Correspondence

E Public Comments (if applicable)

F Newspaper Public Notice (if applicable)

G Other

APPENDIX G

Mitigation Guidance

G-1. Statutory Mitigation. Statutory mitigation must be done in accordance with applicable statutes, executive orders, regulations and guidance. Statutory mitigation is generally defined as actions that reduce the severity or intensity of adverse impacts of other actions, to include:

a. Avoiding the impact by not taking a certain action or parts of an action or by moving the project location. Applicants are encouraged to consider avoidance as the preferred mitigation measure.

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, for example, by adjusting site layout.

c. Rectifying the impact by repairing, rehabilitating, relocating, or restoring the affected public resources.

d. Reducing or eliminating the impact over time by monitoring, maintaining, and/or replacing equipment or structures to prevent future degradation from equipment or structural failure over the life of the action.

e. Compensating for the impact by replacing or providing substitute resources or environments. With the exception of unique habitats under imminent threat of destruction, a mere change in ownership of existing habitat is generally not considered mitigation. Habitat improvement must be implemented in addition to long-term protection of the habitat.

f. Statutory Mitigation requirements vary somewhat under the environmental laws, regulations, and executive orders. For Corps of Engineers Regulatory Program mitigation guidance see 40 CFR Part 230 "Compensatory Mitigation for Losses of Aquatic Resources", 33 CFR 320.4 paragraph R, and 33 CFR 332. It is recommended that for actions on Civil Works lands and waters that require mitigation under these regulations, the mitigation occur on site where feasible.

G-2. Non-Statutory Mitigation. The definition of mitigation is broadened to include "all measures necessary to make the Corps project whole". Not all of the adverse impacts to a site will be required to be mitigated by a federal statute or regulation, but for outgrants, all adverse impacts must be mitigated unless a waiver is issued (see paragraph G-4). The applicant for the outgrant will be advised of the impact and required mitigation. An example of impacts that may not be covered by existing authorities is a proposal that is categorically excluded from NEPA

documentation but may still result in the destruction of a small wooded area containing twenty trees. There are no threatened or endangered species or any wetlands involved. Another instance may entail the destruction of 20 campsites resulting from a road expansion. In each case, the impacted resources must be restored or otherwise mitigated.

G-3. Real Estate Outgrant Documentation.

a. Where mitigation is required as a result of an outgrant, it will be addressed as a condition of the real estate instrument. A copy of the mitigation plan, use restrictions, and/or Memorandum of Agreement (MOA) will be included as an attachment to the outgrant document. If a mitigation plan, use restrictions, or an MOA is required, the outgrant instrument must be modified to incorporate compliance with the terms of the plan, use restrictions, or MOA as a condition of the outgrant. The outgrant instrument must be modified to incorporate a specific termination clause to address failure to comply with mitigation requirements.

b. In addition, action may also be required under the specific statute(s) that required the mitigation. A clear timetable must also be provided if mitigation requirements extend beyond the execution date of the outgrant agreement. Coordination with the office(s) which are responsible for these requirements must be completed to ensure the requirements are in place before the outgrant document is executed.

G-4. Waiver of Non-Statutory Mitigation Requirements. When only "Non-Statutory Mitigation" is required, the Corps may choose to waive this mitigation requirement in cases where the requested activity will further an authorized project purpose and/or meet a public demand that the Corps is unable to meet. However, the Corps does not have the authority to waive mitigation requirements when such mitigation is required by a law, regulation, or statute.

G-5. Responsibility for Expenses. In most cases, all costs associated with processing the mitigation aspect of the outgrant and initiating and maintaining mitigation requirements over the life of the mitigation action are the responsibility of the outgrant applicant and will be agreed upon and documented in the real estate outgrant instrument. These mitigation costs are in addition to the fair market value consideration, if applicable, of the property to be outgranted and any other purely administrative expenses incurred as a result of an outgrant request under 10 U.S.C. §2695. Any administrative fees received at the project will be handled in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations," dated 17 September 2010 and the Real Estate regulations.

G-6. Future Ownership and Management of Mitigation Properties. On-site mitigation should be achieved wherever possible. If on-site mitigation is not possible, off-site mitigation should be undertaken, as follows:

a. Acquisition of Real Property. To the maximum extent possible, any additional lands or other real property interest required to be purchased by the applicant for mitigation purposes will be contiguous with existing project lands or waters. The NEPA decision document will clearly address any requirement for the acquisition of non-statutory mitigation lands. In no instance will the Corps take title to real property prior to receiving approval of the Director of Civil Works. Management of mitigation properties will be accomplished in accordance with 33 CFR 332.7. Typically, a Real Estate Plan (REP) will be prepared to support this type of action. However, there may be circumstances that require the preparation and approval of a Real Estate Design Memorandum (REDM) where acquisition of the land is tantamount to implementation of the project and approval of a decision document is required prior to commencement of the acquisition effort (e.g., some fish and wildlife mitigation projects). In addition, an REDM may be appropriate when there is a new acquisition requirement for an existing project for which a REDM was previously utilized.

b. Other Mitigation Services. Other types of mitigation services include but are not limited to:

(1) Mitigation services generally consists of restoration, creation, relocation, or improvements of the same type (i.e., three acres of existing wildlife habitat destroyed and replaced with three or more acres of new wildlife habitat lands) to offset the damaged resource base. In other circumstances, it may be more appropriate to accept other types of services (i.e., three acres of existing wildlife habitat destroyed and mitigated by rip rapping 1,000 linear feet of shoreline to protect nearby wildlife habitat). Entering into agreements for the replacement of impacted wildlife habitat with recreation facilities is generally not appropriate.

(2) In the absence of specific authority, the Corps may not accept cash in lieu of mitigation services. In some limited instances, however, it is possible for the Corps to directly perform the mitigation work by entering into agreements with states or others and then to be reimbursed by the state or others for such work. Approval from the Assistant Secretary of the Army (Civil Works) (ASA-CW) may be necessary prior to entering into such an agreement. In some cases, a real estate instrument or a management plan may be required in accordance with 33 CFR 332.7 if a land acquisition is part of the mitigation service.

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APPENDIX H

Additional Guidance For Specific Outgrant Applications

H-1. Requirements for Specific Structures and Applicable Legal Compliance. In addition to the requirements listed in Enclosures 1 through 3, the following information may be required as appropriate for specific types of outgrants. This list is not intended to be all inclusive but an illustrative example of additional requirements that exist for specific types of outgrants. The construction, operation and safety of these outgrants will require compliance with all applicable Federal, state, and local laws, codes, and standards. While it is not the responsibility of the Corps to inspect these facilities for safety compliance, the Corps reserves the right to halt the construction and or operation of the structure if a safety issue creates a danger to the life of project visitors or the ability of the Corps to carry out project missions. All of these specific outgrant applications must include a safety point of contact. Also note that the application must be submitted by the entity to whom the outgrant will be assigned.

a. Electric Power and Communication Lines, and Structures and Facilities for Radio, Television, and other Communication Services.

(1) Specify line heights, voltage, cutoff locations and elevations.

(2) Submitted plans must be certified by a state certified professional engineer as being in compliance with the National Electric Safety Code requirements, ER-1110-2-4401, 30 May 97 (Clearances For Electric Power Supply Lines and Communication Lines Over Reservoirs), American National Standard ANSIC2, National Electric Safety Code (NESC), American National Standard ANSI/NFPA 70, and the National Electric Code NEC.

b. Sewer Lines.

(1) A state certified professional engineer must certify plans as being in compliance with all applicable Federal, State, and local government regulations.

(2) Additional requirements may apply pertaining to flood-proofing and impacts to public resources.

c. Water Lines

(1) A state certified professional engineer must certify plans as being in compliance with all applicable Federal, State, and local government regulations.

(2) Additional requirements may apply pertaining to flood-proofing and impacts to public resources.

(3) Please note that prior to the execution of any outgrant for withdrawal of water or use of storage at a Corps reservoir, the applicant will be required to execute a water supply agreement with the Corps pursuant to Real Estate Policy Guidance Letter No. 26, June 10, 2008 and any applicable updates or additional guidance. The applicable Corps of Engineers District Real Estate Office should be consulted for details on this matter

d. Water Intake Structure.

(1) Submit plans and specifications showing any effects on Corps facilities, as well as current and future water volume needs that may impact water storage/surplus water contracts, etc.

(2) Please note that prior to the execution of any outgrant for withdrawal of water or use of storage at a Corps reservoir, the applicant will be required to execute a water supply agreement with the Corps pursuant to Real Estate Policy Guidance Letter No. 26, June 10, 2008 and any applicable updates or additional guidance. The applicable Corps of Engineers District Real Estate Office should be consulted for details on this matter.

(3) Provide written documentation showing permission has been procured from the water contract holder if required.

(4) Provide approval/permit from appropriate regulatory agency (state/local) if applicable. Also provide water supply contract, authorizing document, or decision document based on statute, for authorizing a water supply intake.

(5) Provide documentation of review and approval from Corps of Engineers Dam Safety Committee.

e. Outfalls (e.g. stormwater, sewage, etc.).

(1) A copy of the National Pollutant Discharge Elimination System (NPDES) permit must be provided for approval of any outfall that is placed on Corps administered lands and waters. Also furnish any other state/local approvals as applicable.

(2) A plan to prevent erosion, and to prevent litter, trash, and pollutants from being deposited on Corps administered lands and waters must be provided.

(3) Submitted plans must be certified by a state certified professional engineer.

(4) Submitted plans must be in compliance with Project Shoreline Management Plan if applicable.

f. Oil, Natural Gas and Fuel Carrying Pipelines (Under 30 U.S.C. § 185).

(1) Disclosure of Ownership - If a partnership, corporation, association, or other business entity applies for an easement, the application shall disclose, where applicable:

(a) Name and address of each partner.

(b) Name and address of each shareholder owning 3 percent or more of the shares; the number and percentage of any class of voting shares of the entity; and

(c) Name and address of each affiliate of the entity. If the entity controls the affiliate, include the number of shares and percentage of any class of voting stock of that affiliate; if, however, the affiliate controls the entity, include the number of shares and percentage of any class of voting stock of the entity.

(2) If this information is already on file, and current, in the District Engineer's office, or local Bureau of Land Management or Federal Energy Regulatory Commission offices, references may be made to it; the applicant need not file repetitious disclosure documents with successive applications.

g. Roads.

(1) Generally, Civil Works lands will only be made available for roads that are considered regional arteries or freeways (See Definitions in the Regulation). All other types of roads, including driveways and alleys, are generally not permitted on these lands. The expansion of existing roads on Civil Works lands will be considered on a case by case basis.

(2) Indicate whether or not Federal Highway Administration funds are being used for this road.

(3) A state certified professional engineer must certify plans as being in compliance with all applicable Federal, State, and local government Regulations.

h. Telecommunications. Authorities applicable to issuing outgrants for telecommunication purposes depending on the type of instruments desired are referenced in the Telecommunications Act of 1996, which is codified at 47 U.S.C. §332 and implementing regulations are provided in 41 CFR 102-79.70 to 79.100. In addition the applications must be in compliance with forthcoming Engineering Regulation 405-1-80 (Management and Outgrant Programs). Chapter 12, Telecommunications Facilities. Proposals must include documentation to ensure the outgrant would not create the following problems:

(1) Impair, interfere, or degrade the Federal missions of the project or its operations.

(2) Interfere with existing radio frequency (RF) activities.

(3) Documentation of coordination with Federal Aviation Administration (FAA) and/or Department of Defense (DoD) and sitting approval for any proposed telecommunication facility that will be located within proximity to an existing FAA facility or DoD system.

i. Hydropower facilities. Each request to construct/develop hydropower facilities is unique and will be handled on a case by case basis per ER 1110-2-1454 as amended.

HALFF

POTENTIAL USACE CROSSINGS EVALUATED

ENVIRONMENTAL AND LAND USE
CONSTRAINTS MAP
RAMHORN HILL SWITCH -- DUNHAM SWITCH
345 kV TRANSMISSION LINE PROJECT

ONCOR

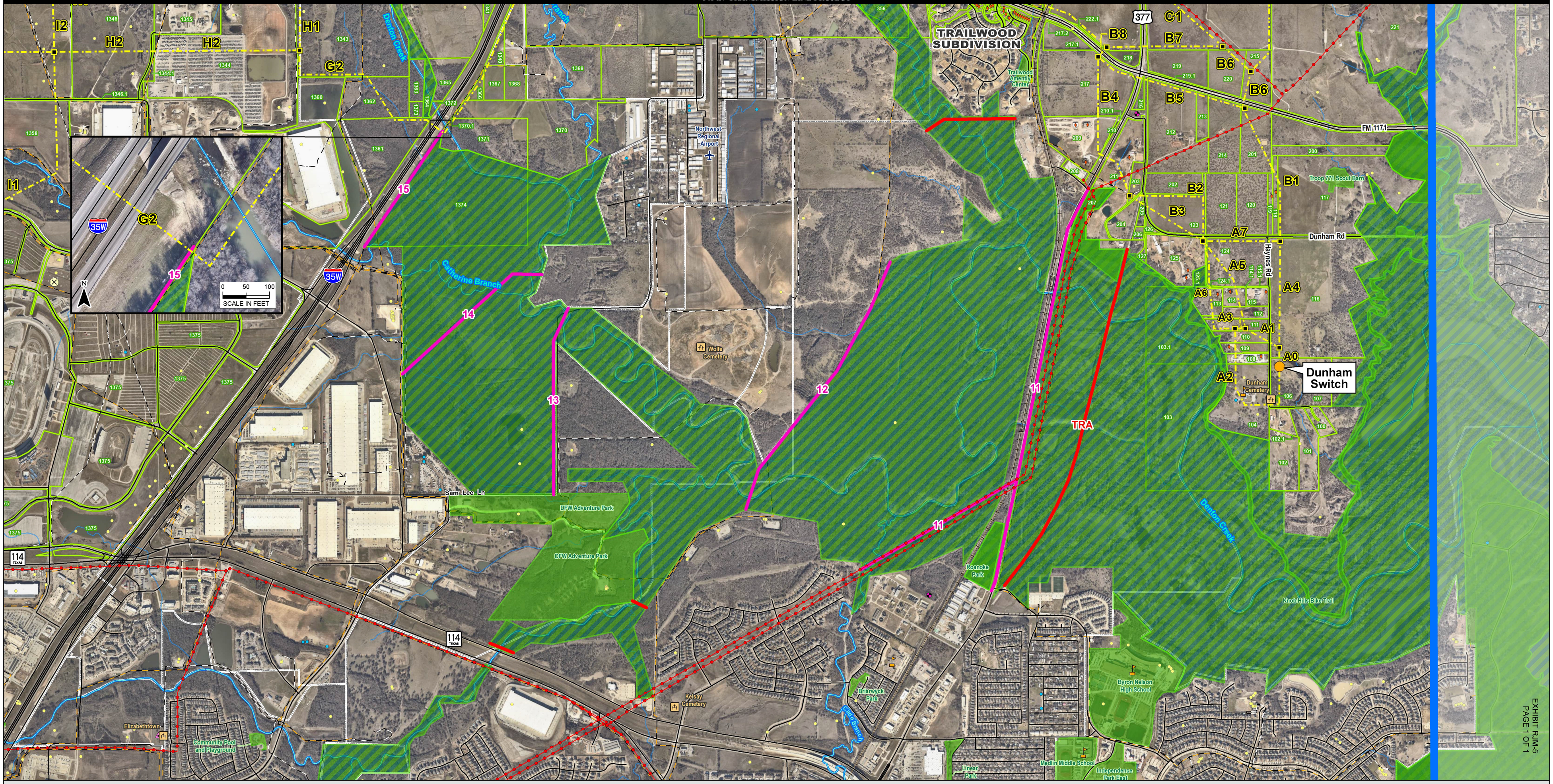


EXHIBIT RJM-5
PAGE 1 OF 1

MAP FEATURES

- STUDY AREA BOUNDARY
- CITY BOUNDARY
- TRACT NUMBER AND BOUNDARY
- PARK / RECREATIONAL AREA
- USACE RECREATIONAL AREA
- EXISTING TRANSMISSION LINE
- RAILROAD
- PUBLIC ROAD
- PIPELINE GREATER THAN 8"
- PIPELINE LESS THAN 8"
- RIVER / STREAM
- USACE GRAPEVINE LAKE MASTERPLAN UTILITY CORRIDOR
- CROSSING OUTSIDE DESIGNATED USACE UTILITY CORRIDOR
- PROJECT ENDPOINT
- NODE BETWEEN ADJACENT ROUTE LINKS
- PRELIMINARY ALTERNATIVE ROUTE LINK
- HABITABLE STRUCTURE (WITHIN 520 FEET OF ROUTE)
- RAILROAD COMMISSION WELL DATA
- TEXAS WATER DEVELOPMENT BOARD GROUNDWATER WELL DATA
- AIRPORT / AIRSTRIP
- HELIPORT
- TRAVELING IRRIGATION*
- HISTORICAL MARKER
- NATIONAL REGISTER OF HISTORIC PLACES SITE
- CEMETERY
- COMMUNICATION TOWER
- SCHOOL

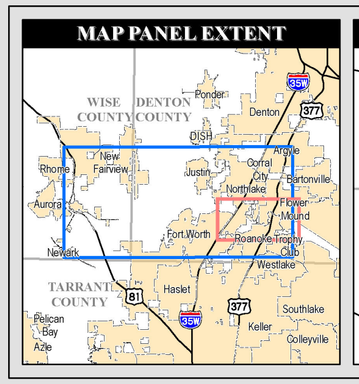
Notes:

1. Some legend symbols are enlarged for easier identification.
2. Aerial photography is from the most recent available database (NearMap, 2023).
3. Sensitive cultural resource data are not shown on this map as these data are not to be reproduced, distributed, or released to the public.
4. Data are for display purposes only. All features and boundaries have been approximated based on information gathered from review of public resources and from field reconnaissance. Railroad Commision of Texas GIS data was last updated on August 30, 2022.
5. This map contains county appraisal district data. Property lines shown are approximate and are not verified by field survey. Property data prepared by Integra Realty Resources with route location furnished by Halff.
6. Legend items indicated by (*) represent features that were researched, verified, and recorded but are otherwise beyond the map extents, and cannot be located on the map.

Date Plotted: 6/6/2023
Date Revised: 6/6/2023

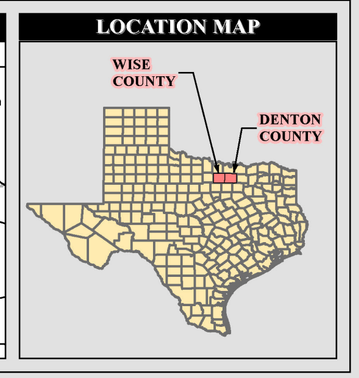
N
0 500 1,000 2,000
SCALE IN FEET
0 0.125 0.25 0.5
SCALE IN MILES

MAP PANEL EXTENT



MAP VIEW EXTENT

LOCATION MAP



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERSP. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF

September 3, 2010

Real Estate Division

SUBJECT: Public Utility Commission (PUC) Docket No. 38597, Application of ONCOR Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Krum West, Anna 345-kV CREZ Transmission Line in Cooke, Collin, Denton, and Grayson Counties, Lewisville Lake

Mr. Wes Speed
Vice President, Transmission
ONCOR Electric Delivery Company LLC
1601 Bryan Street
Dallas, Texas 75201

Dear Mr. Speed:

This letter is in response to the ONCOR Electric Delivery Company LLC (ONCOR) request to potentially route a planned 345-kV transmission line across Federal lands, specifically the Greenbelt Corridor (the Greenbelt), between Ray Roberts Lake and Lewisville Lake. As you are aware, the U.S. Army Corps of Engineers (Corps) has worked closely with ONCOR over the last 10 months to evaluate 7 alternative routes.

The 7 alternatives evaluated included a No Action alternative, which would route the transmission line north of Ray Roberts Lake, with no easement required to cross Corps property. In addition to the No Action alternative, 6 routes crossing the Greenbelt were evaluated. Two of the Greenbelt crossings would impact existing Conservation Easements, 4 of the Greenbelt crossings would be south of the Conservation Easements, and the southernmost route being the existing utility easement designated as the Denton-Frisco-Celina 138-kV transmission line. The Corps understands this existing utility easement will be referenced in the CCN Application as link Z8. After reviewing this information, the Corps has concluded that ONCOR has the authority, under its existing easements, to construct the proposed transmission line project across Corps property in the existing right-of-way in accordance with all applicable laws and regulations.

Based on environmental analysis of the 6 alternative Greenbelt crossings, the Corps has determined the southernmost route within the existing ONCOR easement, to have the least environmental impact to Federal lands. Based on this determination, the Corps will discontinue further consideration of the other potential alternatives, which would cross the Greenbelt or outside the existing utility easement.

For future coordination, please contact either Mrs. Cheryl Jasper in Operations Division at (817) 886-1570 or Mrs. Vicki Akers in Real Estate Division at (817) 886-1114.

Sincerely,

Rocky D. Lee
Acting Chief, Real Estate Division