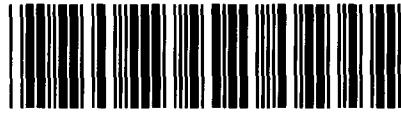




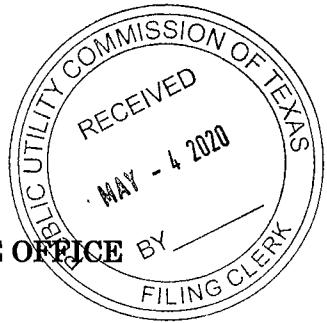
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Addendum StartPage: 0

SOAH DOCKET NO. 473-19-6766
PUC DOCKET No. 49523



APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED MOUNTAIN HOME 138-KV TRANSMISSION LINE PROJECT IN GILLESPIE, KERR, AND KIMBLE COUNTIES, TEXAS

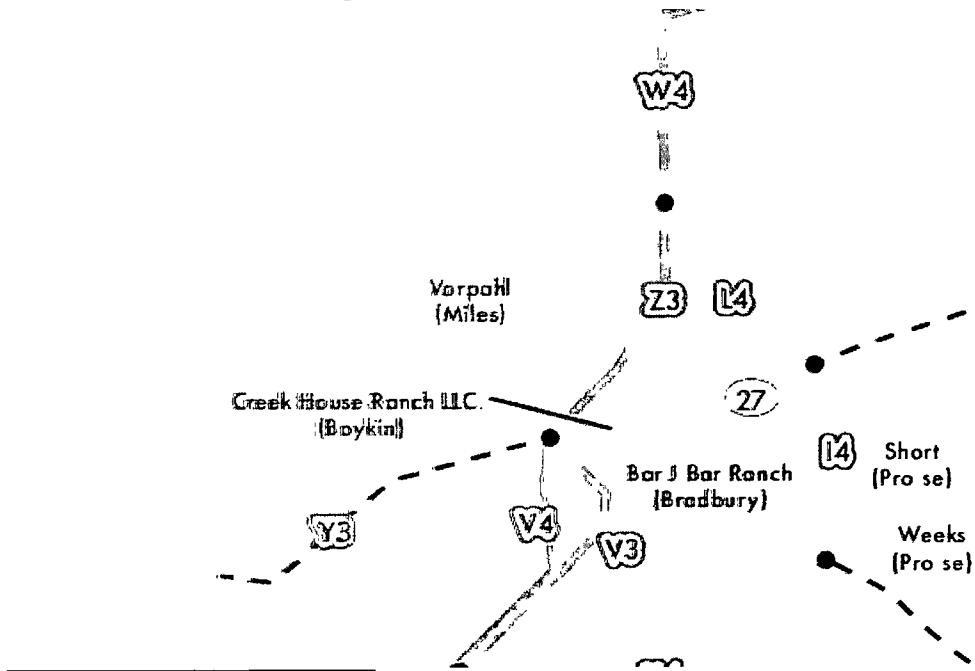
§ BEFORE THE STATE OFFICE BY
§ OF
§ ADMINISTRATIVE HEARINGS

JOINT EXCEPTIONS OF CREEK HOUSE RANCH, LLC AND VORPAHL RANCH, LP TO THE PROPOSAL FOR DECISION

Creek House Ranch, LLC ("Creek House") and Vorpahl Ranch, LP ("Vorpahl") (collectively, "Intervenors") file these Exceptions to Proposal for Decision. These are submitted pursuant to the PUC OPDM Exceptions and Replies Memorandum. Per the Memorandum, this document follows the outline of the PFD, but for brevity lists only the sections addressed.

I. INTRODUCTION AND SUMMARY

For the routes south of Substation 3, this case boils down to choosing the best path at the "fork in the road." The map below¹ shows the area for decision (node at W4, Z3, and L4).



¹ LCRA TSC Ex. No. 16 (Rainbow Map with "A" routes).

The Administrative Law Judges (“ALJs”) recommend Route Hunt 37A (using Z3, V4) over Route Hunt 7A (using L4, I4) requested by Intervenors. Intervenors object for all reasons stated in their briefing, incorporated herein, but for efficiency focus on the following:

1. Segment C5 (used by 37A, not 7A) was not properly noticed under PURA § 37.054(b) and 16 TAC § 22.52(a)(4). Landowners not noticed were deprived of their right to intervene. Segment C5 and Hunt 37A are therefore not viable.
2. Hunt 7A better promotes prudent avoidance. Hunt 7A has only 30 directly affected habitable structures. Hunt 37A has 37 (including Creek House Habitable Structure 144 situated 8 feet from the ROW).
3. Hunt 7A is the superior choice under the factors in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B).

IV. NOTICE

The PFD cites 16 TAC § 22.52(a)(3)(C), which provides that "[b]efore final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice."² That section goes on to say that "land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less . . ."³ Because LCRA TSC obtained consent from Beta Real Estate & Savoy to cross their land with Segment C5, the PFD finds adequate notice under 16 TAC § 22.52(a)(1)-(4) and PURA § 37.054.⁴

Intervenors except to this finding. PURA § 37.054 provides that “[w]hen an application for a certificate is filed, the commission shall . . . give notice of the application to interested parties” and that “[a] person . . . interested in the application may intervene at the hearing.”⁵

² PUC Procedural Rules, 16 TAC § 22.52 (a)(3)(C).

³ PUC Procedural Rules, 16 TAC § 22.52 (a)(3).

⁴ Proposal for Decision at 6 [Doc 319].

⁵ PURA § 37.054 (a)(1) and (b) (emphasis added).

PURA does not limit rights to notice and intervention only to those “directly affected,” but rather includes all “interested” parties. 16 TAC § 22.52(a)(4) makes clear that landowners “listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less” must be noticed of a public meeting.⁶ Obviously, these persons are “interested.” It follows that those persons are likewise entitled to notice and an opportunity to intervene.

Segment C5, an arguably non-forward progressing segment,⁷ utilized by Hunt 37A, was not part of LCRA’s original Application.⁸ LCRA TSC did not notice landowners south of new Segment C5.⁹ LCRA contends no notice was required because these landowners are not “directly affected.”¹⁰ Procedural Rules, however, do not override statutory substantive rights. To the extent of any conflict, PURA controls.¹¹ Moreover, Procedural Rules do not tie the hands of the Commission.¹²

Those interested persons within 300 feet of Segment C5 received no notice and were denied the opportunity to attend a public meeting, learn about the segment, and, if desired, intervene. This denied due process. To argue otherwise disregards public policy. If equity demands notice to landowners within 300 feet of primary segments, those concerns apply

⁶ PUC Procedural Rules, 16 TAC § 22.52 (a)(4).

⁷ Tr. at 291:5 to 292:15.

⁸ Tr. at 91:1-14 (Wenmohs).

⁹ Tr. at 94:4-8 (Wenmohs) (when asked if landowners south of new Segment C5 were noticed, Mr. Wenmohs replied, “No, because they are not directly affected by Segment C5.”).

¹⁰ See Tr. at 93:22-25 (Wenmohs). See also PUC Procedural Rules, 16 TAC § 22.52 (a)(3) (“For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.”)

¹¹ PUC Procedural Rules, 16 TAC § 22.1(b)(4) (“To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.”).

¹² PUC Procedural Rules, 16 TAC § 22.1(b)(3) (“This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the commission staff, or the substantive rights of any person.”).

with equal force, if not more, to modified segments.

A similar concern has been expressed in a recent Rulemaking Proceeding filed by Doug & Linda Crosson, Darrell & Patricia Lebo, Bruce & Ann Ahlhorn, and Lawrence D. & Deneice Griffin under PUC Docket No. 50226.¹³ In that proceeding, Petitioners argued that a utility should not be allowed to relocate a transmission line pursuant to 16 TAC § 25.101(c)(5)(D)¹⁴ without filing an application for CCN amendment or securing consent of all landowners entitled to notice under 16 TAC § 25.83(c)(3).¹⁵ Petitioners there, similar to Intervenors here, argued that “landowners who were not notified as a part of the original CCN procedure because they were outside the notification range would then find themselves at the mercy of a neighboring landowner who did have the ability to be a part of the routing process.”¹⁶ This concern has also been expressed by State Representative Erin Zweiner, District 45 – Hays and Blanco Counties, in a letter to the Commission, dated December 12, 2019.¹⁷

There are obviously landowners neighboring C5 who were not noticed – many of whom, from the parceling of the lots on the map, own lots with habitable structures or that are parceled for future use involving habitable structures. This is shown in the excerpt from the LCRA TSC map below on which Segment C5 has been drawn in by Creek House:¹⁸

[Intentionally Left Blank – See Next Page for Map]

¹³ Petition for Rulemaking, PUC Docket No. 50266 [Doc. 1].

¹⁴ 16 TAC § 25.101(c)(5)(D) discusses “routine activities” that may be done without a CCN, including, “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.”

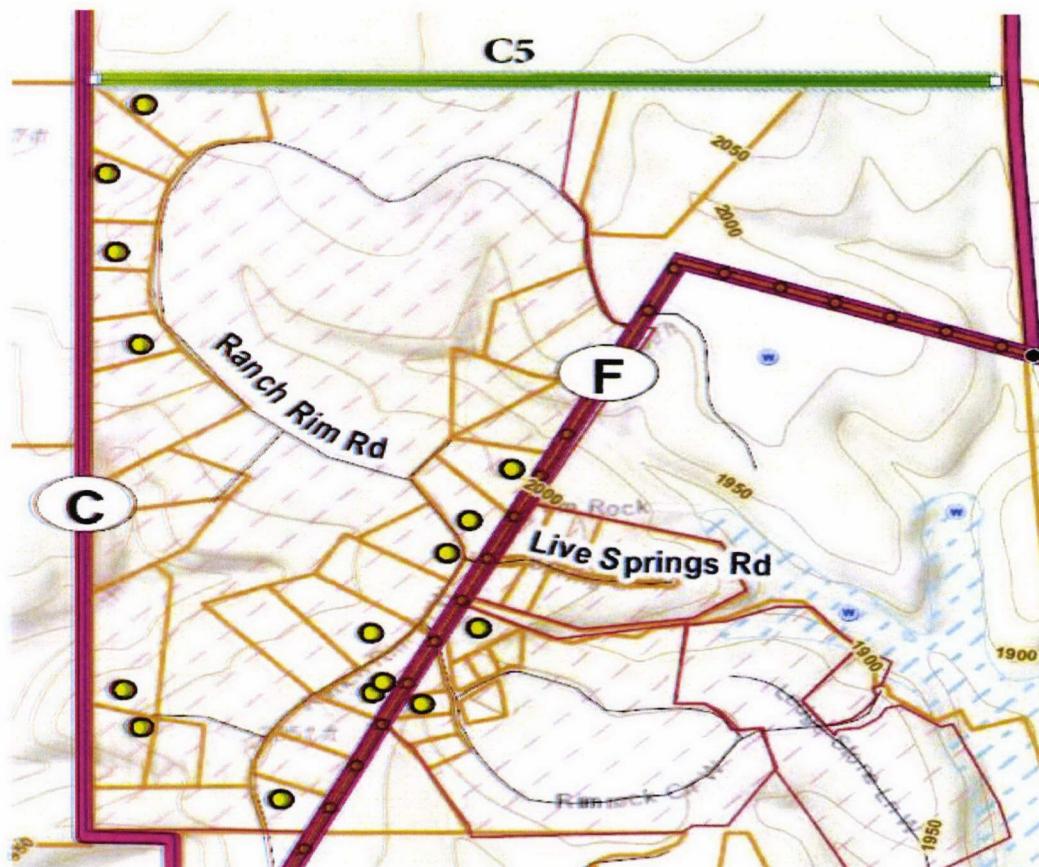
¹⁵ 16 TAC § 25.83(c)(3) requires notice when relocating under 16 TAC § 25.101(c)(5)(D) to “all landowners with a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less.”

¹⁶ Petition for Rulemaking, PUC Docket No. 50266 at 5 [Doc. 1].

¹⁷ Zweiner Letter, December 12, 2019, to Commission in PUC Docket No. 50266 [Doc 6].

¹⁸ LCRA TSC Ex. No. 1 (Application) at Fig. 4-25b (Constraints Topographical Map) (with Segment C5 drawn in by Creek House by insertion of the green line labeled, “C5”).

Excerpt of Map from Figure 4-25b Constraints Topographical Map Showing Platted Subdivision South of C5 with No Notice of New Segment C5



The area south of C5 indicated with magenta-colored dashed lines marks a platted subdivision according the map's key.¹⁹ These and other landowners within 300 feet of Segment C5 have been deprived of equal protection of the laws. If C5 is used in the final route, this proceeding will have favored landowners whose property boundaries lie within 300 feet of the centerline of any proposed segment originally noticed over those similarly situated to C5 that were not noticed. This is counter to the mandate of PURA § 37.056(c), which requires that

¹⁹ LCRA TSC Ex. No. 1 (Application) at Fig. 4-25b (Constraints Topographical Map).

certificates be granted “on a nondiscriminatory basis.”²⁰ This would violate public policy as decreed by PURA §§ 37.054 and 37.056(c). Hunt 37A is therefore not viable.

V. PRELIMINARY ORDER ISSUES

D. Preliminary Order Issue No. 4

Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 Tex. Admin. Code (TAC) § 25.101(b)(3)(B)?

The PFD states:

Route Hunt 37A avoids routing concerns expressed by a large majority of the intervenors. Only intervenors Creek House and Vorpahl Ranch, L.P. opposed Route Hunt 37A in their post-hearing briefs, favoring Route Hunt 7A instead.²¹

While routing by groupthink is not permitted, only a handful of landowners opposed Hunt 7A.²² More importantly, many others supported or were unopposed to 7A.²³ As explained below, however, Hunt 7A best meets the criteria.

2. Community Values

The PFD discusses community values as they relate to the Mountain Home Project.²⁴ Community values could not be discerned, however, regarding Hunt 37A because landowners south of C5 had no opportunity to speak.²⁵ Notwithstanding that, the PFD states that “the

²⁰ PURA § 37.056(c).

²¹ Proposal for Decision at 14 [Doc 319].

²² For example, opposed were Bar J Bar Ranch (Reply Br. at 1, Doc. 306); Beta Real Estate & Savoy (Initial Br. at 6, Doc. 302); Wallace & Allison Family Trusts (Initial Br. at 9, Doc. 300); and Short (Dir. Testimony at 3, Doc. 229).

²³ For example, supportive or unopposed were Creek House (Initial Br. at 2, Doc. 295); Vorpahl (Initial Br. at 4, Doc. 295); Apache Springs (Initial Br. at 18, Doc. 303); Zorritos & Shelton (Initial Br. at 21, Doc. 292); Slapak (Initial Br. at 4, Doc. 305); Henderson Branch & TRT Ranch (Initial Br. at 15, Doc. 297); Chinquapin Land (Initial Br., Doc. 290); Texas Parks & Wildlife (Initial Br., Doc. 299); and Segments A&C Landowners (Initial Br. at 4, Doc. 304).

²⁴ Proposal for Decision at 15-18 [Doc 319].

²⁵ Tr. at 94:4-8 (Wenmohs) (when asked if landowners south of new Segment C5 were noticed, Mr. Wenmohs replied, “No, because they are not directly affected by Segment C5.”).

concerns generally expressed by the public in the questionnaires regarding the Project included: proximity of the routes and substation locations to homes; . . . ”²⁶

At the “fork in the road” shown above,²⁷ Hunt 7A uses Segments L4, I4, H4 while Hunt 37A uses Segments Z3, V4, and C5.²⁸ Taking Hunt 7A at the fork spares seven directly affected habitable structures—two on Creek House—one of which is within 8 feet of the right of way.²⁹ Segments L4, I4, H4 do not directly affect habitable structures of any other landowner.³⁰ Rather, they come within 309 feet of a habitable structure on the Short property,³¹ which is outside of 300 feet of the centerline and therefore not directly affected under the Rules. They also cross the Bar J Bar tract and the Beta Real Estate & Savoy tract, but do not come within 300 feet of a habitable structure.³²

The PFD furthermore says that “[w]henever possible, LCRA TSC and POWER avoided identifying alternative route segments near habitable structures.”³³ There were 40 original alternative routes.³⁴ These were comprised of 119 primary alternative route segments.³⁵ When 18 proposed modifications were added, the total proposed routes grew to 58.³⁶ Yet, despite all of these choices, Segment Z3—8 feet from a habitable structure on Creek House—was proposed. This demonstrates that alternative route segments near habitable

²⁶ Proposal for Decision at 16 [Doc 319].

²⁷ See *supra* at 1.

²⁸ See also LCRA TSC Ex. No. 15 (Route and Cost Data Chart showing Routes with Segments).

²⁹ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, and V3; see also LCRA TSC Ex. No. 1 (Application) at 7 (“The typical ROW of width for the Proposed Project is estimated to be 100 feet”, which makes the distance from the centerline to the edge of the easement 50 feet.) and Table 5-15 at C-20 (showing the distance from Habitable Structure 143 to the centerline of Z3 at 58 feet, which makes the distance from the edge of the ROW to the structure 8 feet).

³⁰ LCRA TSC Ex. No. 2 (Large Intervenor Map) see all Segments of the Hunt Routes to the Hunt Substation south of Interstate Highway 10.

³¹ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

³² Tr. at 200:12-23 (Wenmohs).

³³ Proposal for Decision at 17 [Doc 319].

³⁴ Proposal for Decision at 7 [Doc 319].

³⁵ Proposal for Decision at 7 [Doc 319].

³⁶ Proposal for Decision at 7 [Doc 319].

structures were not avoided “whenever possible.”

7. Costs (and Length)

Cost is an important factor considered by the Commission. Based upon the LCRA TSC cost estimates, Route Hunt 7A ranks in the top 1/3 of all alternative routes.³⁷ Hunt 7A is only 5% more expensive than the least expensive alternative route (Hunt 5A).³⁸ Hunt 7A is less than 1% more expensive than LCRA TSC's best meets route (Hunt 13).³⁹ Hunt 7A is only 1% more expensive than the W4-modified Hunt 13 (Hunt 31A).⁴⁰ Hunt 7A is less than 1% more expensive than Hunt 31A.⁴¹

On the other hand, estimating costs is difficult; it involves multiple inputs.⁴² There are many variables to consider.⁴³ The accuracy of transmission line estimates can vary with market conditions, labor costs, supply costs, changes in land use, and modifications necessary to comply with the PUC's Final Order.⁴⁴

Furthermore, discrepancies in mapping software, for example, can affect cost estimates. In this case, a GIS mapping discrepancy caused original cost estimates to be overstated.⁴⁵ Route Hunt 7 was originally estimated at \$66.57 million, but was corrected down to \$64.82

³⁷ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) – Hunt 7A ranks 14th out of 49 alternative routes.

³⁸ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 61.22) \div 61.22 = 0.0527605357726233$

³⁹ LCRA TSC Ex. No. 1 (Application) at 39:40 (identifying Hunt 13 as its “best meets” route); *see also* LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 64.00) \div 64.00 = 0.00703125$.

⁴⁰ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 63.62) \div 63.62 = 0.0130462118830556$.

⁴¹ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 64.33) \div 64.33 = 0.001865381625991$.

⁴² Tr. at 73:3-6 (Symank).

⁴³ Tr. at 73:7-9 (Symank).

⁴⁴ LCRA TSC Ex. No. 8 (Symank Direct) at 15:9-14. Tr. at 73:13 to 74:10 (regarding original estimates published in the May 31, 2019 Application).

⁴⁵ See Tr. at 77:22 to 79:2 (Symank).

million, resulting in an overstatement of \$1.75 million.⁴⁶ Route Hunt 13 was originally estimated at \$65.82 million, but corrected down to \$64.00 million, resulting in an overstatement of \$1.82 million.⁴⁷ After the corrections, the difference in cost between Route Hunt 5 and Route Hunt 13 increased by about \$500,000.⁴⁸

The final estimate for Hunt 7A is around \$120,000 more than Hunt 37A. This difference is less than the nearly \$2 million overstatements for Hunt 7 and Hunt 13, but in the neighborhood of the \$500,000 change in the difference between Hunt 5 and Hunt 13.

Curtis Symank, cost expert for LCRA TSC, agreed that all estimates contain a margin of error.⁴⁹ Given the less than 1% difference between Hunt 7A as compared to Hunt 37A, Intervenors contend that, effectively, Hunt 7A costs the same as Hunt 37A. Accordingly, Hunt 7A performs very well on comparative cost.

Length is another important factor considered by the Commission. Route Hunt 7A is the 7th shortest alternative route.⁵⁰ Hunt 7A falls within the top 15% of the shortest routes.⁵¹ Hunt 7A is a quarter mile shorter than Hunt 37A.⁵² Hunt 7A is only 1.28 miles longer than the shortest route (Hunt 5A). Hunt 7A is only .43 miles longer than the W4-modified Hunt 13 (Hunt 31A). Hunt 7A is .08 miles shorter than Hunt 13. Accordingly, regarding length Hunt 7A is a top performer and virtually identical to LCRA TSC's best meets route (Hunt 13) and that route modified like the other "A" routes (Hunt 31A).

⁴⁶ Tr. at 81:3 to 81:14 (Symank) (discussion estimates corrected in the July 19, 2019 Errata). Please note that the Transcript contains a typo (it says \$64.18 million is the corrected number, when in fact it was \$64.82 million).

⁴⁷ Tr. at 81:15 to 82:1 (Symank).

⁴⁸ Tr. at 151:12-19 (Symank).

⁴⁹ Tr. at 82:2-6 (Symank). While Mr. Symank argues that differences between estimated input costs and actual input costs vary consistently across routes, Tr. at 74:5-10, Creek House contends that variations will not always be consistent across routes, but notwithstanding that, the fact remains that cost estimates have an inherent margin of error that cannot be avoided.

⁵⁰ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵¹ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵² LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

9. Prudent Avoidance

As stated, for the routes south of Substation 3, this case boils down to choosing the best path at the "fork in the road." If one heads south on W4, when you get to the "fork in the road," go east, and for essentially the same cost, spare 7 habitable structures, and promote prudent avoidance.

Given the relative closeness of the numbers of the other criteria, focusing on prudent avoidance and minimizing impact on directly affected habitable structures is very important. Hunt 7A is tied at 7th for the least number of directly affected habitable structures.⁵³ This puts Hunt 7A in the top 15% of all routes.⁵⁴ Hunt 18, the route with the least directly affected habitable structures at 23, has seven fewer than Hunt 7A at 30.⁵⁵ However, only 1 owner intervened out of the 23 arguably directly affected habitable structures on Hunt 18—Kari and Jacob Short, Habitable Structure 143, addressed below.⁵⁶

Regarding all of what will be called the "Hunt Family Key Routes" (Hunt 5, Hunt 5A, Hunt 7, Hunt 7A, Hunt 13, Hunt 31, Hunt 31A, Hunt 36, Hunt 36A, Hunt 37, and Hunt 37A) the owners of only 4 parcels with directly affected habitable structures intervened.⁵⁷ The owners of 2 of those parcels, Michael and Janelle Carothers, on one hand, and Janice and Rudolph Winzinger, on the other, are directly affected only by Hunt 5 and Hunt 5A, discussed later.⁵⁸ The owners of the remaining 2 parcels are Creek House Ranch, LLC (Nancy

⁵³ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵⁴ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes) (7th out of 49 alternate routes = 0.1428571428571429).

⁵⁵ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵⁶ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segment I4; LCRA TSC Ex. No. 1 (Application), Table 5-20 at C-29; see also Tr. at 89:19-21 (Meaux).

⁵⁷ LCRA TSC Ex. No. 2 (Large Intervenor Map) at all Segments of the Key Routes to the Hunt Substation south of Interstate Highway 10.

⁵⁸ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segment C.

McLemore), on one hand, and Kari and Jacob Short, on the other.⁵⁹ Which is impacted depends upon whether Segment Z3 or Segment L4 is used. When headed south, whether to take Z3 to the southwest or L4 to the southeast of this "fork in the road" is a critical question.

Please see the following excerpt from the Large Intervenor Map:



⁵⁹ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, V3 and Segment I4.

Hunt 7 and Hunt 7A are the only Key Routes that take advantage of the southeast path at the fork.⁶⁰ While this path crosses the property of Kari and Jacob Short,⁶¹ their Habitable Structure 143 is 309 feet from the centerline of Segment I4.⁶² Habitable Structure 143, outside of 300 feet from the centerline, is arguably not directly affected under the Rules.⁶³ It was included, rather, in an abundance of caution given potential horizontal inaccuracies in aerial photography.⁶⁴ In addition, the path where I4 crosses the Short property parallels an existing Central Texas Electric Cooperative (“CTEC”) distribution line⁶⁵ and avoids other routing constraints,⁶⁶ as discussed in Creek House’s initial brief.

The other Hunt Family Key Routes, that head southwest at the fork, severely impact Creek House Habitable Structures 144 and 145.⁶⁷ This path situates Segment Z3’s right of way 8 feet from Habitable Structure 144 according to LCRA TSC’s measurements⁶⁸ and 5' 9" away according to Ms. McLemore’s measurements.⁶⁹ Habitable Structure 144 is therefore at most 58 feet from the centerline of Z3.⁷⁰ Furthermore, this path places Z3 only 218 feet from Creek House Habitable Structure 145.⁷¹ As explained by LCRA TSC expert, Lance Wenmohs:

⁶⁰ LCRA TSC Ex. No. 13 (Rainbow Map without “A” routes); LCRA TSC Ex. No. 16 (Rainbow Map with “A” routes).

⁶¹ Tr. at 89:19-21 (Meaux); *see also* LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments I4.

⁶² LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

⁶³ PUC Procedural Rules, 16 TAC § 22.52 (a)(3) (“For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.”)

⁶⁴ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9 (“Due to the potential horizontal inaccuracies of the aerial photography and data utilized, all habitable structures within 310’ have been identified.”)

⁶⁵ Tr. at 204:24 to 205:5 (Wenmohs).

⁶⁶ Tr. at 207:12 to 208:14 (Meaux).

⁶⁷ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, and V3.

⁶⁸ LCRA TSC Ex. No. 1 (Application) at 7 (“The typical ROW of width for the Proposed Project is estimated to be 100 feet”, which makes the distance from the centerline to the edge of the easement 50 feet.) and Table 5-15 at C-20 (showing the distance from Habitable Structure 143 to the centerline of Z3 at 58 feet, which makes the distance from the edge of the ROW to the structure 8 feet.

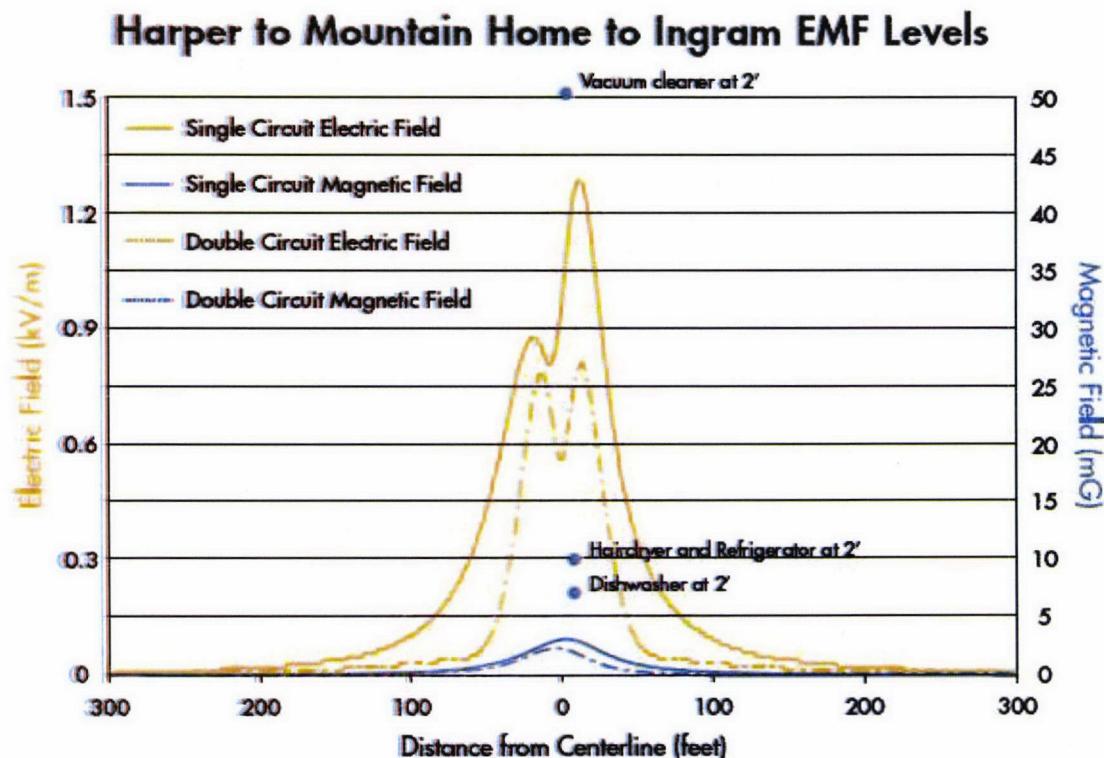
⁶⁹ Creek House Ranch, LLC Ex. 1 (Nancy McLemore) at 2.

⁷⁰ LCRA TSC Ex. No. 1 (Application), Table 5-15 at C-20.

⁷¹ LCRA TSC Ex. No. 1 (Application), Table 5-15 at C-20.

"[A]s we see from the testimony and the evidence, Creek House has a couple of habitable structures pressed up very close to their property edge. So while Z3 does parallel the Vorpahl Ranch property boundary, it is necessarily close to two habitable structures located on Creek House Ranch."⁷²

Habitable Structure 144 could not get much closer or it would be inside the right of way. As shown in the LCRA TSC chart below used at open house meetings, EMFs spike inside 100 feet from the centerline⁷³:



Based on anticipated loading at system peak load conditions and minimum ground clearance.

⁷² Tr. at 158:22 to 159:2 (Wenmohs).

⁷³ LCRA TSC Ex. No. 1 (Application), App. B to EA at 74.

It is not until around 50 feet away from the centerline that both electric and magnetic fields begin to drop off to background levels.⁷⁴ As shown on above, levels spike at 100 feet and closer. Habitable Structure 143, at only 58 feet from centerline, is within this zone. People who use Habitable Structure 143 will almost certainly spend time inside the easement area (50 feet and closer), an area typically “less frequently” occupied.⁷⁵

The PUC’s policy of prudent avoidance calls for “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”⁷⁶ Open house meeting questionnaires confirmed the importance of this policy. Respondents indicated that the most important factor was maximizing the distance from residences.⁷⁷

Hunt 7A has 7 less directly affected habitable structures than Hunt 37A. Hunt 7A costs essentially the same as Hunt 37A. Hunt 7A is a hair shorter than Hunt 37A. Two of the habitable structures spared by Hunt 7A are Creek House Habitable Structures 144 and 145.⁷⁸ The relatively nominal additional cost constitutes "reasonable investments of money and effort" to promote prudent avoidance. **Routing the line within 58 feet of a home, when it can be routed to avoid directly affecting any habitable structure, ignores prudent avoidance.** As stated above, the Short Habitable Structure 143 is arguably 309 feet from the centerline and therefore not directly affected.⁷⁹ Furthermore, when continuing south on Hunt 7A along Segments H4 and I there are no directly affected habitable structures on the Bar J Bar Ranch or the Beta Real Estate & Savoy properties.⁸⁰ The impact on these latter two properties is attenuated by the sheer size of both when compared to Creek House.⁸¹ In addition, were any of

⁷⁴ Tr. at 162:14-22 (Symank).

⁷⁵ See Tr. at 161:23 to 162:3 (Symank).

⁷⁶ PUC Substantive Rule 25.101(a)(6), 16 TAC § 25.101(a)(6).

⁷⁷ Tr. at 144:7-16.

⁷⁸ See Tr. at 88:20 to 89:9 (Wenmohs).

⁷⁹ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

⁸⁰ Tr. at 200:12-23 (Wenmohs).

⁸¹ Tr. at 205:6-19 (Meaux).

the Hunt Family Key Routes, other than Hunt 7A, to be chosen, the line would be routed just off the west boundary of the Creek House property. Yet, Creek House would receive no compensation despite having two habitable structures significantly closer to the centerline than the one habitable structure located on the Short property over 300 feet away from the line. On the other hand, were Hunt 7A to be chosen, the Shorts would be compensated for the portion of Segment I4 that crosses their property along the route of an existing CTEC distribution line.

Furthermore, Hunt 7A has fewer directly affected habitable structures than all but 2 of the Hunt Family Key Routes. Hunt 7A has 2 fewer directly affected habitable structures than Hunt 31A; has 4 fewer than Hunt 31; has 7 fewer than Hunt 36A and Hunt 37A; and has 9 fewer than Hunt 36 and Hunt 37.⁸² Of the Hunt Family Key Routes, only Hunt 5 and Hunt 5A outperform Hunt 7A on directly affected habitable structures. As discussed in Creek House's initial brief, however, Hunt 5 and Hunt 5A fail to take advantage of collocation on Segment F. Collocation on the existing 138 kV line from the Hunt Substation to Ingram Substation promotes aesthetic⁸³ benefits and lower EMFs.⁸⁴

11. Summary of Routing Recommendations

Intervenors except to the PFD's Summary of Routing Recommendations. The following is the PFD's summary of routing recommendations. Intervenors' responses are noted in brackets and red text:

After considering all of the routing considerations discussed above, the ALJs conclude that Route Hunt 37A [Hunt 7A] is the best alternative route, mainly because it (1) utilizes paralleling (including all compatible corridors) for 18.9 miles, or 84 percent of its total length [Hunt 7A utilizes paralleling at a very

⁸² LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes); *see also* Tr. at 84:13 to 85:10 (Meaux).

⁸³ *See* Tr. at 70:2-12 (Wenmohs) Tr. at 70:18 to 71:5 (Meaux).

⁸⁴ *See* Tr. at 195:16 to 196:23 (Symank).

close 17.7 miles or 80%]; (2) is shorter in length than the majority of the alternative routes [Hunt 7A is in fact a quarter mile shorter than Hunt 37A]; (3) is estimated to be less costly than the majority of the alternative routes [Hunt 7A is effectively the same cost (within the margin of error for cost estimating) as Hunt 37A]; (4) crosses the golden-cheeked warbler modeled habitat for only 66.0 acres [Hunt 7A crosses that modeled habitat for only 76.1 acres and this factor is of less value given that, according to LCRA TSC, none of the routes would have a significant negative impact on the golden-cheeked warbler⁸⁵]; and (5) avoids using segments that TPWD expressed concern about [Hunt 7A also avoids using these segments of concern to TPWD (Segments O, R, S and Z)]. Furthermore, it would avoid routing concerns expressed by a large majority of the intervenors [Hunt 7A is virtually the same on the other criteria, but the stark difference is Hunt 7A spares 7 more directly affected habitable structures, including one that is 8 feet away from the centerline].

VI. CONCLUSION

Intervenors except to the PFD's Conclusion. The following is the PFD's Conclusion. Intervenors' responses are noted in brackets and red text:

Based on the evidence presented, Route Hunt 37A [Hunt 7A] best meets the regulatory and statutory criteria because it:

- is estimated to be the fourteenth least costly route with an estimated cost of \$64,330,000 [Hunt 7A is effectively the same cost (within the margin of error for cost estimating) as Hunt 37A];
- is the tenth shortest route at 22.51 miles [Hunt 7A is in fact a quarter mile shorter than Hunt 37A];
- utilizes paralleling (including all compatible corridors) for 18.9 miles, or 84 percent of its total length, which is 4 percent more than the route recommended by LCRA TSC [Hunt 7A utilizes paralleling at a very close 17.7 miles or 80%];

⁸⁵ Tr. at 109:10 to 110:4 (Meaux) (“As I state in my testimony, the project is not anticipated to significantly adversely impact populations of any federally listed endangered or threatened species, including the golden-cheek warbler.”).

- impacts 37 habitable structures, which is only 12 more than the route that impacts the least habitable structures [Hunt 7A impacts only 30 habitable structures and using 7A over 37A spares seven directly affected habitable structures -- two on Creek House -- one of which is within 8 feet of the ROW, AND Segments L4, I4, H4 of Hunt 7A do not directly affect habitable structures of any other landowner];
- crosses only 66.0 acres of the golden-cheeked warbler modeled habitat, which is approximately 13 acres less than TPWD's recommended route [Hunt 7A crosses that modeled habitat for only 76.1 acres and this factor is of less value given that, according to LCRA TSC, none of the routes would have a significant negative impact on the golden-cheeked warbler⁸⁶];
- avoids using segments that TPWD expressed the most concern about [Hunt 7A also avoids using these segments of concern to TPWD (Segments O, R, S and Z)]; and
- crosses 11.6 miles of areas of high archeological/historic site potential, which is only 1.4 miles more than the route that crosses the least areas of high archeological/historic site potential [Hunt 7A is virtually the same at 11.5 miles].

PARTING PLEA TO PUC

There are many cases where the Honorable Commissioners prudently accept the PFD. There are others—like this one—when wisdom says, “No.” With 58 routes and over 100 segments, there is no reason to route within 8 feet of a habitable structure. Landowners south of C5 should not be excluded from the conversation. The law is no respecter of persons. A landowner should not be allowed to negotiate a new segment without the law hearing from “interested” neighbors—“directly affected” or not. They are not second-class citizens. The Procedural Rules are careful to give way to substantive rights and the authority of the PUC. Due

⁸⁶ Tr. at 109:10 to 110:4 (Meaux) (“As I state in my testimony, the project is not anticipated to significantly adversely impact populations of any federally listed endangered or threatened species, including the golden-cheek warbler.”).

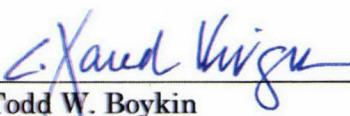
process, equity, and fairness have to override technical rules. Commissioners are appointed for times like this.

WHEREFORE, PREMISES CONSIDERED, Intervenors Creek House Ranch, LLC and Vorpahl Ranch, LP respectfully request that the Public Utility Commission approve the Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line within Gillespie, Kerr, and Kimble Counties only on Route 7A, as that route best complies with the routing factors of PURA and the PUC's Substantive Rules as demonstrated by the totality of the record evidence.

Respectfully Submitted,

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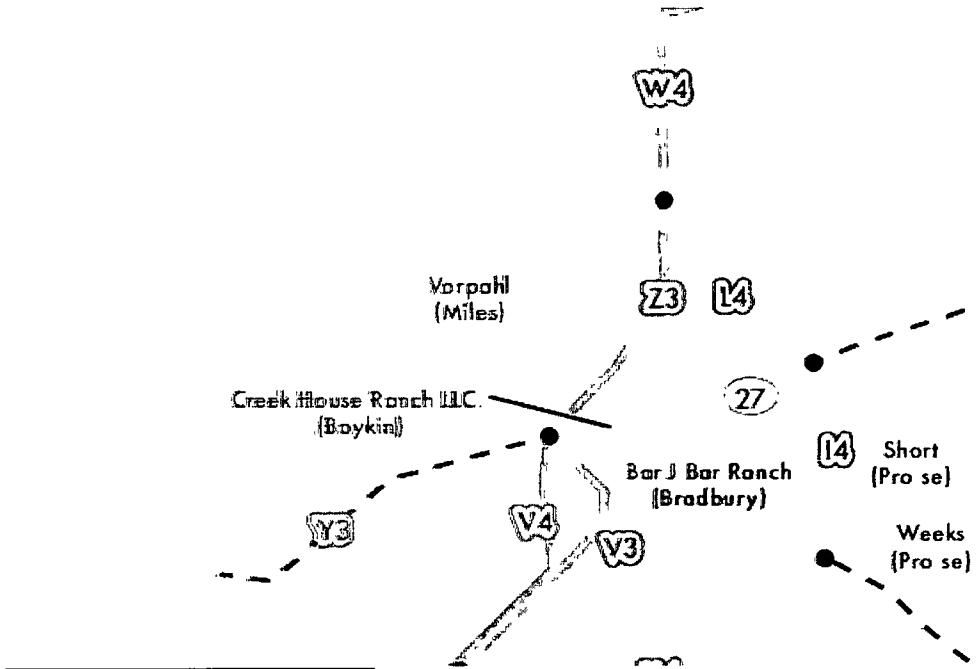
**SOAH DOCKET NO. 473-19-6766
PUC DOCKET No. 49523**

**JOINT EXCEPTIONS OF CREEK HOUSE RANCH, LLC AND
VORPAHL RANCH, LP TO THE PROPOSAL FOR DECISION**

Creek House Ranch, LLC (“Creek House”) and Vorpahl Ranch, LP (“Vorpahl”) (collectively, “Intervenors”) file these Exceptions to Proposal for Decision. These are submitted pursuant to the PUC OPDM Exceptions and Replies Memorandum. Per the Memorandum, this document follows the outline of the PFD, but for brevity lists only the sections addressed.

I. INTRODUCTION AND SUMMARY

For the routes south of Substation 3, this case boils down to choosing the best path at the "fork in the road." The map below¹ shows the area for decision (node at W4, Z3, and L4).



¹ LCRA TSC Ex. No. 16 (Rainbow Map with "A" routes).

The Administrative Law Judges (“ALJs”) recommend Route Hunt 37A (using Z3, V4) over Route Hunt 7A (using L4, I4) requested by Intervenors. Intervenors object for all reasons stated in their briefing, incorporated herein, but for efficiency focus on the following:

1. Segment C5 (used by 37A, not 7A) was not properly noticed under PURA § 37.054(b) and 16 TAC § 22.52(a)(4). Landowners not noticed were deprived of their right to intervene. Segment C5 and Hunt 37A are therefore not viable.
2. Hunt 7A better promotes prudent avoidance. Hunt 7A has only 30 directly affected habitable structures. Hunt 37A has 37 (including Creek House Habitable Structure 144 situated 8 feet from the ROW).
3. Hunt 7A is the superior choice under the factors in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B).

IV. NOTICE

The PFD cites 16 TAC § 22.52(a)(3)(C), which provides that "[b]efore final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice."² That section goes on to say that "land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less . . ."³ Because LCRA TSC obtained consent from Beta Real Estate & Savoy to cross their land with Segment C5, the PFD finds adequate notice under 16 TAC § 22.52(a)(1)-(4) and PURA § 37.054.⁴

Intervenors except to this finding. PURA § 37.054 provides that “[w]hen an application for a certificate is filed, the commission shall . . . give notice of the application to interested parties” and that “[a] person . . . interested in the application may intervene at the hearing.”⁵

² PUC Procedural Rules, 16 TAC § 22.52 (a)(3)(C).

³ PUC Procedural Rules, 16 TAC § 22.52 (a)(3).

⁴ Proposal for Decision at 6 [Doc 319].

⁵ PURA § 37.054 (a)(1) and (b) (emphasis added).

PURA does not limit rights to notice and intervention only to those “directly affected,” but rather includes all “interested” parties. 16 TAC § 22.52(a)(4) makes clear that landowners “listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230kV or less” must be noticed of a public meeting.⁶ Obviously, these persons are “interested.” It follows that those persons are likewise entitled to notice and an opportunity to intervene.

Segment C5, an arguably non-forward progressing segment,⁷ utilized by Hunt 37A, was not part of LCRA’s original Application.⁸ LCRA TSC did not notice landowners south of new Segment C5.⁹ LCRA contends no notice was required because these landowners are not “directly affected.”¹⁰ Procedural Rules, however, do not override statutory substantive rights. To the extent of any conflict, PURA controls.¹¹ Moreover, Procedural Rules do not tie the hands of the Commission.¹²

Those interested persons within 300 feet of Segment C5 received no notice and were denied the opportunity to attend a public meeting, learn about the segment, and, if desired, intervene. This denied due process. To argue otherwise disregards public policy. If equity demands notice to landowners within 300 feet of primary segments, those concerns apply

⁶ PUC Procedural Rules, 16 TAC § 22.52 (a)(4).

⁷ Tr. at 291:5 to 292:15.

⁸ Tr. at 91:1-14 (Wenmohs).

⁹ Tr. at 94:4-8 (Wenmohs) (when asked if landowners south of new Segment C5 were noticed, Mr. Wenmohs replied, “No, because they are not directly affected by Segment C5.”).

¹⁰ See Tr. at 93:22-25 (Wenmohs). See also PUC Procedural Rules, 16 TAC § 22.52 (a)(3) (“For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.”)

¹¹ PUC Procedural Rules, 16 TAC § 22.1(b)(4) (“To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.”).

¹² PUC Procedural Rules, 16 TAC § 22.1(b)(3) (“This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the commission staff, or the substantive rights of any person.”).

with equal force, if not more, to modified segments.

A similar concern has been expressed in a recent Rulemaking Proceeding filed by Doug & Linda Crosson, Darrell & Patricia Lebo, Bruce & Ann Ahlhorn, and Lawrence D. & Deneice Griffin under PUC Docket No. 50226.¹³ In that proceeding, Petitioners argued that a utility should not be allowed to relocate a transmission line pursuant to 16 TAC § 25.101(c)(5)(D)¹⁴ without filing an application for CCN amendment or securing consent of all landowners entitled to notice under 16 TAC § 25.83(c)(3).¹⁵ Petitioners there, similar to Intervenors here, argued that “landowners who were not notified as a part of the original CCN procedure because they were outside the notification range would then find themselves at the mercy of a neighboring landowner who did have the ability to be a part of the routing process.”¹⁶ This concern has also been expressed by State Representative Erin Zweiner, District 45 – Hays and Blanco Counties, in a letter to the Commission, dated December 12, 2019.¹⁷

There are obviously landowners neighboring C5 who were not noticed – many of whom, from the parceling of the lots on the map, own lots with habitable structures or that are parceled for future use involving habitable structures. This is shown in the excerpt from the LCRA TSC map below on which Segment C5 has been drawn in by Creek House:¹⁸

[Intentionally Left Blank – See Next Page for Map]

¹³ Petition for Rulemaking, PUC Docket No. 50266 [Doc. 1].

¹⁴ 16 TAC § 25.101(c)(5)(D) discusses “routine activities” that may be done without a CCN, including, “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.”

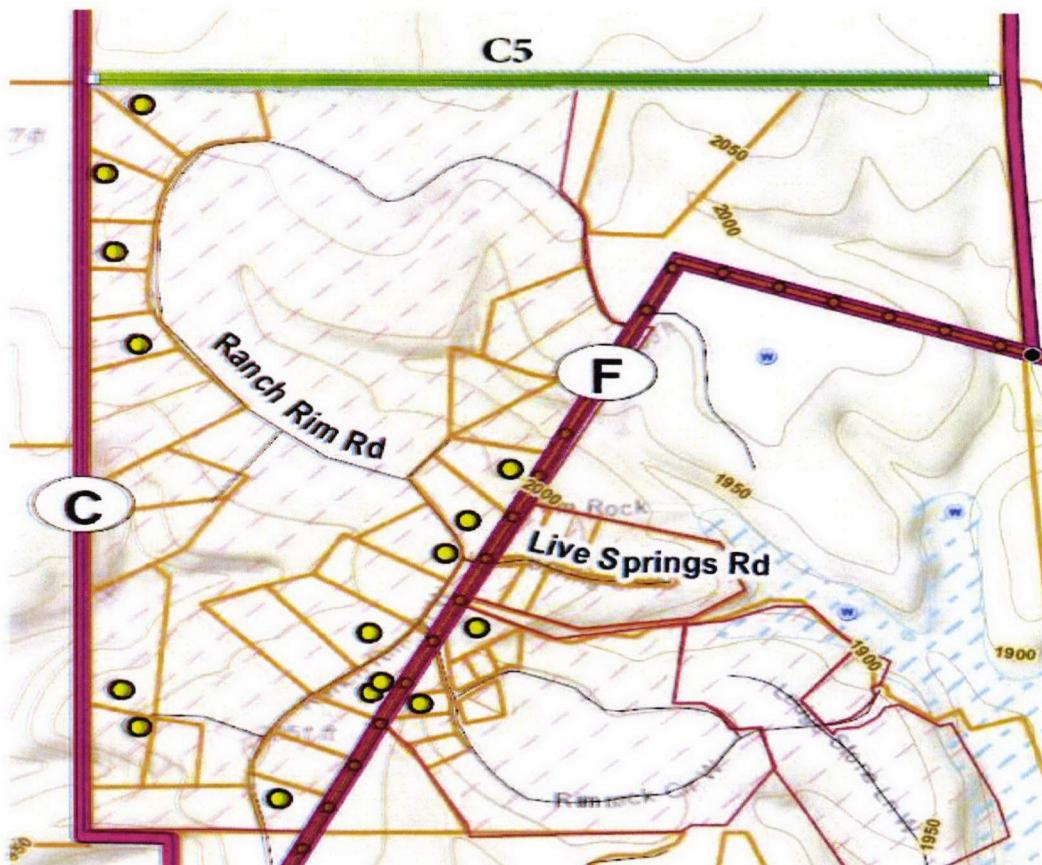
¹⁵ 16 TAC § 25.83(c)(3) requires notice when relocating under 16 TAC § 25.101(c)(5)(D) to “all landowners with a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less.”

¹⁶ Petition for Rulemaking, PUC Docket No. 50266 at 5 [Doc. 1].

¹⁷ Zweiner Letter, December 12, 2019, to Commission in PUC Docket No. 50266 [Doc 6].

¹⁸ LCRA TSC Ex. No. 1 (Application) at Fig. 4-25b (Constraints Topographical Map) (with Segment C5 drawn in by Creek House by insertion of the green line labeled, “C5”).

Excerpt of Map from Figure 4-25b Constraints Topographical Map Showing Platted Subdivision South of C5 with No Notice of New Segment C5



The area south of C5 indicated with magenta-colored dashed lines marks a platted subdivision according the map's key.¹⁹ These and other landowners within 300 feet of Segment C5 have been deprived of equal protection of the laws. If C5 is used in the final route, this proceeding will have favored landowners whose property boundaries lie within 300 feet of the centerline of any proposed segment originally noticed over those similarly situated to C5 that were not noticed. This is counter to the mandate of PURA § 37.056(c), which requires that

¹⁹ LCRA TSC Ex. No. 1 (Application) at Fig. 4-25b (Constraints Topographical Map).

certificates be granted “on a nondiscriminatory basis.”²⁰ This would violate public policy as decreed by PURA §§ 37.054 and 37.056(c). Hunt 37A is therefore not viable.

V. PRELIMINARY ORDER ISSUES

D. Preliminary Order Issue No. 4

Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 Tex. Admin. Code (TAC) § 25.101(b)(3)(B)?

The PFD states:

Route Hunt 37A avoids routing concerns expressed by a large majority of the intervenors. Only intervenors Creek House and Vorpahl Ranch, L.P. opposed Route Hunt 37A in their post-hearing briefs, favoring Route Hunt 7A instead.²¹

While routing by groupthink is not permitted, only a handful of landowners opposed Hunt 7A.²² More importantly, many others supported or were unopposed to 7A.²³ As explained below, however, Hunt 7A best meets the criteria.

2. Community Values

The PFD discusses community values as they relate to the Mountain Home Project.²⁴ Community values could not be discerned, however, regarding Hunt 37A because landowners south of C5 had no opportunity to speak.²⁵ Notwithstanding that, the PFD states that “the

²⁰ PURA § 37.056(c).

²¹ Proposal for Decision at 14 [Doc 319].

²² For example, opposed were Bar J Bar Ranch (Reply Br. at 1, Doc. 306); Beta Real Estate & Savoy (Initial Br. at 6, Doc. 302); Wallace & Allison Family Trusts (Initial Br. at 9, Doc. 300); and Short (Dir. Testimony at 3, Doc. 229).

²³ For example, supportive or unopposed were Creek House (Initial Br. at 2, Doc. 295); Vorpahl (Initial Br. at 4, Doc. 295); Apache Springs (Initial Br. at 18, Doc. 303); Zorritos & Shelton (Initial Br. at 21, Doc. 292); Slapak (Initial Br. at 4, Doc. 305); Henderson Branch & TRT Ranch (Initial Br. at 15, Doc. 297); Chinquapin Land (Initial Br., Doc. 290); Texas Parks & Wildlife (Initial Br., Doc. 299); and Segments A&C Landowners (Initial Br. at 4, Doc. 304).

²⁴ Proposal for Decision at 15-18 [Doc 319].

²⁵ Tr. at 94:4-8 (Wenmohs) (when asked if landowners south of new Segment C5 were noticed, Mr. Wenmohs replied, “No, because they are not directly affected by Segment C5.”).

concerns generally expressed by the public in the questionnaires regarding the Project included: proximity of the routes and substation locations to homes; . . . ”²⁶

At the “fork in the road” shown above,²⁷ Hunt 7A uses Segments L4, I4, H4 while Hunt 37A uses Segments Z3, V4, and C5.²⁸ Taking Hunt 7A at the fork spares seven directly affected habitable structures—two on Creek House—one of which is within 8 feet of the right of way.²⁹ Segments L4, I4, H4 do not directly affect habitable structures of any other land-owner.³⁰ Rather, they come within 309 feet of a habitable structure on the Short property,³¹ which is outside of 300 feet of the centerline and therefore not directly affected under the Rules. They also cross the Bar J Bar tract and the Beta Real Estate & Savoy tract, but do not come within 300 feet of a habitable structure.³²

The PFD furthermore says that “[w]henever possible, LCRA TSC and POWER avoided identifying alternative route segments near habitable structures.”³³ There were 40 original alternative routes.³⁴ These were comprised of 119 primary alternative route segments.³⁵ When 18 proposed modifications were added, the total proposed routes grew to 58.³⁶ Yet, despite all of these choices, Segment Z3—8 feet from a habitable structure on Creek House—was proposed. This demonstrates that alternative route segments near habitable

²⁶ Proposal for Decision at 16 [Doc 319].

²⁷ See *supra* at 1.

²⁸ See also LCRA TSC Ex. No. 15 (Route and Cost Data Chart showing Routes with Segments).

²⁹ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, and V3; see also LCRA TSC Ex. No. 1 (Application) at 7 (“The typical ROW of width for the Proposed Project is estimated to be 100 feet”, which makes the distance from the centerline to the edge of the easement 50 feet.) and Table 5-15 at C-20 (showing the distance from Habitable Structure 143 to the centerline of Z3 at 58 feet, which makes the distance from the edge of the ROW to the structure 8 feet).

³⁰ LCRA TSC Ex. No. 2 (Large Intervenor Map) see all Segments of the Hunt Routes to the Hunt Substation south of Interstate Highway 10.

³¹ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

³² Tr. at 200:12-23 (Wenmohs).

³³ Proposal for Decision at 17 [Doc 319].

³⁴ Proposal for Decision at 7 [Doc 319].

³⁵ Proposal for Decision at 7 [Doc 319].

³⁶ Proposal for Decision at 7 [Doc 319].

structures were not avoided “whenever possible.”

7. Costs (and Length)

Cost is an important factor considered by the Commission. Based upon the LCRA TSC cost estimates, Route Hunt 7A ranks in the top 1/3 of all alternative routes.³⁷ Hunt 7A is only 5% more expensive than the least expensive alternative route (Hunt 5A).³⁸ Hunt 7A is less than 1% more expensive than LCRA TSC's best meets route (Hunt 13).³⁹ Hunt 7A is only 1% more expensive than the W4-modified Hunt 13 (Hunt 31A).⁴⁰ Hunt 7A is less than 1% more expensive than Hunt 31A.⁴¹

On the other hand, estimating costs is difficult; it involves multiple inputs.⁴² There are many variables to consider.⁴³ The accuracy of transmission line estimates can vary with market conditions, labor costs, supply costs, changes in land use, and modifications necessary to comply with the PUC's Final Order.⁴⁴

Furthermore, discrepancies in mapping software, for example, can affect cost estimates. In this case, a GIS mapping discrepancy caused original cost estimates to be overstated.⁴⁵ Route Hunt 7 was originally estimated at \$66.57 million, but was corrected down to \$64.82

³⁷ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) – Hunt 7A ranks 14th out of 49 alternative routes.

³⁸ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 61.22) \div 61.22 = 0.0527605357726233$

³⁹ LCRA TSC Ex. No. 1 (Application) at 39-40 (identifying Hunt 13 as its “best meets” route); *see also* LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 64.00) \div 64.00 = 0.00703125$.

⁴⁰ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 63.62) \div 63.62 = 0.0130462118830556$.

⁴¹ See LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with “A” routes) from which the calculation can be made $(64.45 - 64.33) \div 64.33 = 0.001865381625991$.

⁴² Tr. at 73:3-6 (Symank).

⁴³ Tr. at 73:7-9 (Symank).

⁴⁴ LCRA TSC Ex. No. 8 (Symank Direct) at 15:9-14. Tr. at 73:13 to 74:10 (regarding original estimates published in the May 31, 2019 Application).

⁴⁵ See Tr. at 77:22 to 79:2 (Symank).

million, resulting in an overstatement of \$1.75 million.⁴⁶ Route Hunt 13 was originally estimated at \$65.82 million, but corrected down to \$64.00 million, resulting in an overstatement of \$1.82 million.⁴⁷ After the corrections, the difference in cost between Route Hunt 5 and Route Hunt 13 increased by about \$500,000.⁴⁸

The final estimate for Hunt 7A is around \$120,000 more than Hunt 37A. This difference is less than the nearly \$2 million overstatements for Hunt 7 and Hunt 13, but in the neighborhood of the \$500,000 change in the difference between Hunt 5 and Hunt 13.

Curtis Symank, cost expert for LCRA TSC, agreed that all estimates contain a margin of error.⁴⁹ Given the less than 1% difference between Hunt 7A as compared to Hunt 37A, Intervenors contend that, effectively, Hunt 7A costs the same as Hunt 37A. Accordingly, Hunt 7A performs very well on comparative cost.

Length is another important factor considered by the Commission. Route Hunt 7A is the 7th shortest alternative route.⁵⁰ Hunt 7A falls within the top 15% of the shortest routes.⁵¹ Hunt 7A is a quarter mile shorter than Hunt 37A.⁵² Hunt 7A is only 1.28 miles longer than the shortest route (Hunt 5A). Hunt 7A is only .43 miles longer than the W4-modified Hunt 13 (Hunt 31A). Hunt 7A is .08 miles shorter than Hunt 13. Accordingly, regarding length Hunt 7A is a top performer and virtually identical to LCRA TSC's best meets route (Hunt 13) and that route modified like the other "A" routes (Hunt 31A).

⁴⁶ Tr. at 81:3 to 81:14 (Symank) (discussion estimates corrected in the July 19, 2019 Errata). Please note that the Transcript contains a typo (it says \$64.18 million is the corrected number, when in fact it was \$64.82 million).

⁴⁷ Tr. at 81:15 to 82:1 (Symank).

⁴⁸ Tr. at 151:12-19 (Symank).

⁴⁹ Tr. at 82:2-6 (Symank). While Mr. Symank argues that differences between estimated input costs and actual input costs vary consistently across routes, Tr. at 74:5-10, Creek House contends that variations will not always be consistent across routes, but notwithstanding that, the fact remains that cost estimates have an inherent margin of error that cannot be avoided.

⁵⁰ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵¹ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵² LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

9. Prudent Avoidance

As stated, for the routes south of Substation 3, this case boils down to choosing the best path at the "fork in the road." If one heads south on W4, when you get to the "fork in the road," go east, and for essentially the same cost, spare 7 habitable structures, and promote prudent avoidance.

Given the relative closeness of the numbers of the other criteria, focusing on prudent avoidance and minimizing impact on directly affected habitable structures is very important. Hunt 7A is tied at 7th for the least number of directly affected habitable structures.⁵³ This puts Hunt 7A in the top 15% of all routes.⁵⁴ Hunt 18, the route with the least directly affected habitable structures at 23, has seven fewer than Hunt 7A at 30.⁵⁵ However, only 1 owner intervened out of the 23 arguably directly affected habitable structures on Hunt 18—Kari and Jacob Short, Habitable Structure 143, addressed below.⁵⁶

Regarding all of what will be called the "Hunt Family Key Routes" (Hunt 5, Hunt 5A, Hunt 7, Hunt 7A, Hunt 13, Hunt 31, Hunt 31A, Hunt 36, Hunt 36A, Hunt 37, and Hunt 37A) the owners of only 4 parcels with directly affected habitable structures intervened.⁵⁷ The owners of 2 of those parcels, Michael and Janelle Carothers, on one hand, and Janice and Rudolph Winzinger, on the other, are directly affected only by Hunt 5 and Hunt 5A, discussed later.⁵⁸ The owners of the remaining 2 parcels are Creek House Ranch, LLC (Nancy

⁵³ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵⁴ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes) (7th out of 49 alternate routes = 0.1428571428571429).

⁵⁵ LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes).

⁵⁶ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segment I4; LCRA TSC Ex. No. 1 (Application), Table 5-20 at C-29; see also Tr. at 89:19-21 (Meaux).

⁵⁷ LCRA TSC Ex. No. 2 (Large Intervenor Map) at all Segments of the Key Routes to the Hunt Substation south of Interstate Highway 10.

⁵⁸ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segment C.

McLemore), on one hand, and Kari and Jacob Short, on the other.⁵⁹ Which is impacted depends upon whether Segment Z3 or Segment L4 is used. When headed south, whether to take Z3 to the southwest or L4 to the southeast of this "fork in the road" is a critical question.

Please see the following excerpt from the Large Intervenor Map:



⁵⁹ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, V3 and Segment I4.

Hunt 7 and Hunt 7A are the only Key Routes that take advantage of the southeast path at the fork.⁶⁰ While this path crosses the property of Kari and Jacob Short,⁶¹ their Habitable Structure 143 is 309 feet from the centerline of Segment I4.⁶² Habitable Structure 143, outside of 300 feet from the centerline, is arguably not directly affected under the Rules.⁶³ It was included, rather, in an abundance of caution given potential horizontal inaccuracies in aerial photography.⁶⁴ In addition, the path where I4 crosses the Short property parallels an existing Central Texas Electric Cooperative (“CTEC”) distribution line⁶⁵ and avoids other routing constraints,⁶⁶ as discussed in Creek House’s initial brief.

The other Hunt Family Key Routes, that head southwest at the fork, severely impact Creek House Habitable Structures 144 and 145.⁶⁷ This path situates Segment Z3’s right of way 8 feet from Habitable Structure 144 according to LCRA TSC’s measurements⁶⁸ and 5' 9" away according to Ms. McLemore’s measurements.⁶⁹ Habitable Structure 144 is therefore at most 58 feet from the centerline of Z3.⁷⁰ Furthermore, this path places Z3 only 218 feet from Creek House Habitable Structure 145.⁷¹ As explained by LCRA TSC expert, Lance Wenmohs:

⁶⁰ LCRA TSC Ex. No. 13 (Rainbow Map without “A” routes); LCRA TSC Ex. No. 16 (Rainbow Map with “A” routes).

⁶¹ Tr. at 89:19-21 (Meaux); *see also* LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments I4.

⁶² LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

⁶³ PUC Procedural Rules, 16 TAC § 22.52 (a)(3) (“For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230kV or less, or within 500 feet of the centerline of a transmission project greater than 230kV.”)

⁶⁴ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9 (“Due to the potential horizontal inaccuracies of the aerial photography and data utilized, all habitable structures within 310’ have been identified.”)

⁶⁵ Tr. at 204:24 to 205:5 (Wenmohs).

⁶⁶ Tr. at 207:12 to 208:14 (Meaux).

⁶⁷ LCRA TSC Ex. No. 2 (Large Intervenor Map) at Segments Q, Z3, and V3.

⁶⁸ LCRA TSC Ex. No. 1 (Application) at 7 (“The typical ROW of width for the Proposed Project is estimated to be 100 feet”, which makes the distance from the centerline to the edge of the easement 50 feet.) and Table 5-15 at C-20 (showing the distance from Habitable Structure 143 to the centerline of Z3 at 58 feet, which makes the distance from the edge of the ROW to the structure 8 feet.

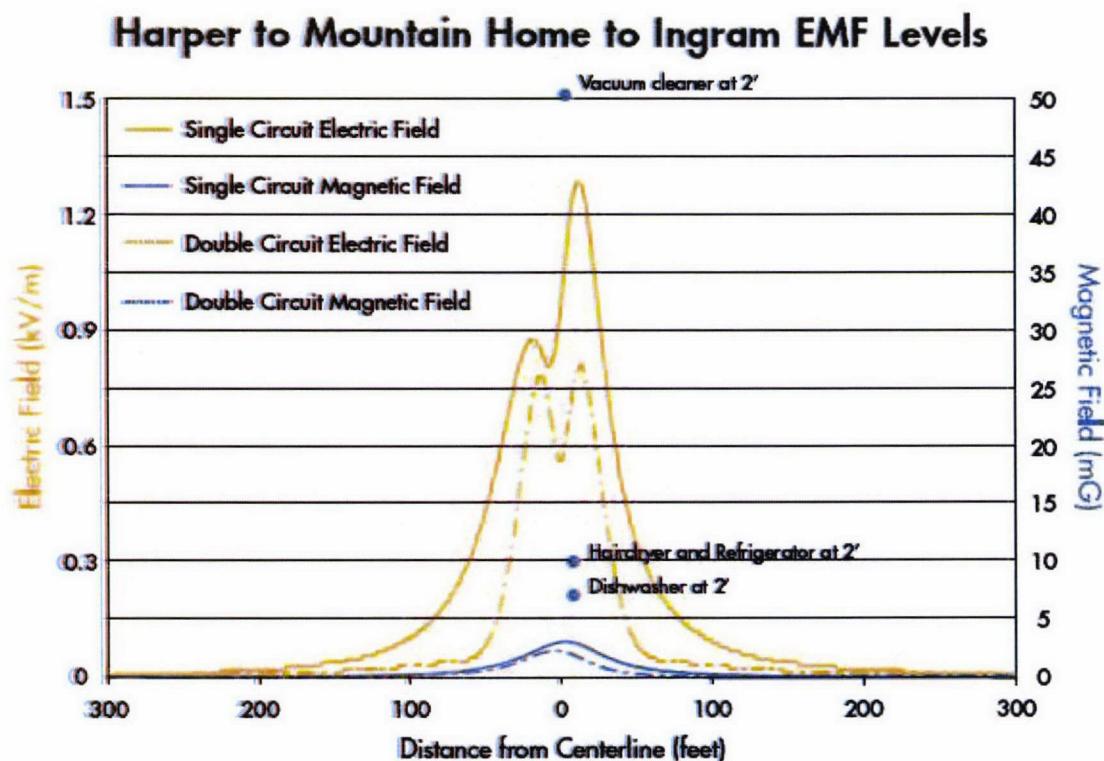
⁶⁹ Creek House Ranch, LLC Ex. 1 (Nancy McLemore) at 2.

⁷⁰ LCRA TSC Ex. No. 1 (Application), Table 5-15 at C-20.

⁷¹ LCRA TSC Ex. No. 1 (Application), Table 5-15 at C-20.

"[A]s we see from the testimony and the evidence, Creek House has a couple of habitable structures pressed up very close to their property edge. So while Z3 does parallel the Vorpahl Ranch property boundary, it is necessarily close to two habitable structures located on Creek House Ranch."⁷²

Habitable Structure 144 could not get much closer or it would be inside the right of way. As shown in the LCRA TSC chart below used at open house meetings, EMFs spike inside 100 feet from the centerline⁷³:



Based on anticipated loading at system peak load conditions and minimum ground clearance.

⁷² Tr. at 158:22 to 159:2 (Wenmohs).

⁷³ LCRA TSC Ex. No. 1 (Application), App. B to EA at 74.

It is not until around 50 feet away from the centerline that both electric and magnetic fields begin to drop off to background levels.⁷⁴ As shown on above, levels spike at 100 feet and closer. Habitable Structure 143, at only 58 feet from centerline, is within this zone. People who use Habitable Structure 143 will almost certainly spend time inside the easement area (50 feet and closer), an area typically “less frequently” occupied.⁷⁵

The PUC’s policy of prudent avoidance calls for “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”⁷⁶ Open house meeting questionnaires confirmed the importance of this policy. Respondents indicated that the most important factor was maximizing the distance from residences.⁷⁷

Hunt 7A has 7 less directly affected habitable structures than Hunt 37A. Hunt 7A costs essentially the same as Hunt 37A. Hunt 7A is a hair shorter than Hunt 37A. Two of the habitable structures spared by Hunt 7A are Creek House Habitable Structures 144 and 145.⁷⁸ The relatively nominal additional cost constitutes "reasonable investments of money and effort" to promote prudent avoidance. **Routing the line within 58 feet of a home, when it can be routed to avoid directly affecting any habitable structure, ignores prudent avoidance.** As stated above, the Short Habitable Structure 143 is arguably 309 feet from the centerline and therefore not directly affected.⁷⁹ Furthermore, when continuing south on Hunt 7A along Segments H4 and I there are no directly affected habitable structures on the Bar J Bar Ranch or the Beta Real Estate & Savoy properties.⁸⁰ The impact on these latter two properties is attenuated by the sheer size of both when compared to Creek House.⁸¹ In addition, were any of

⁷⁴ Tr. at 162:14-22 (Symank).

⁷⁵ See Tr. at 161:23 to 162:3 (Symank).

⁷⁶ PUC Substantive Rule 25.101(a)(6), 16 TAC § 25.101(a)(6).

⁷⁷ Tr. at 144:7-16.

⁷⁸ See Tr. at 88:20 to 89:9 (Wenmohs).

⁷⁹ LCRA TSC Ex. No. 1 (Application), Table 5-9 at C-8 to C-9.

⁸⁰ Tr. at 200:12-23 (Wenmohs).

⁸¹ Tr. at 205:6-19 (Meaux).

the Hunt Family Key Routes, other than Hunt 7A, to be chosen, the line would be routed just off the west boundary of the Creek House property. Yet, Creek House would receive no compensation despite having two habitable structures significantly closer to the centerline than the one habitable structure located on the Short property over 300 feet away from the line. On the other hand, were Hunt 7A to be chosen, the Shorts would be compensated for the portion of Segment I4 that crosses their property along the route of an existing CTEC distribution line.

Furthermore, Hunt 7A has fewer directly affected habitable structures than all but 2 of the Hunt Family Key Routes. Hunt 7A has 2 fewer directly affected habitable structures than Hunt 31A; has 4 fewer than Hunt 31; has 7 fewer than Hunt 36A and Hunt 37A; and has 9 fewer than Hunt 36 and Hunt 37.⁸² Of the Hunt Family Key Routes, only Hunt 5 and Hunt 5A outperform Hunt 7A on directly affected habitable structures. As discussed in Creek House's initial brief, however, Hunt 5 and Hunt 5A fail to take advantage of collocation on Segment F. Collocation on the existing 138 kV line from the Hunt Substation to Ingram Substation promotes aesthetic⁸³ benefits and lower EMFs.⁸⁴

11. Summary of Routing Recommendations

Intervenors except to the PFD's Summary of Routing Recommendations. The following is the PFD's summary of routing recommendations. Intervenors' responses are noted in brackets and red text:

After considering all of the routing considerations discussed above, the ALJs conclude that Route Hunt 37A [Hunt 7A] is the best alternative route, mainly because it (1) utilizes paralleling (including all compatible corridors) for 18.9 miles, or 84 percent of its total length [Hunt 7A utilizes paralleling at a very

⁸² LCRA TSC Ex. No. 15 (Route and Cost Data Chart updated with "A" routes); *see also* Tr. at 84:13 to 85:10 (Meaux).

⁸³ See Tr. at 70:2-12 (Wenmohs) Tr. at 70:18 to 71:5 (Meaux).

⁸⁴ See Tr. at 195:16 to 196:23 (Symank).

close 17.7 miles or 80%]; (2) is shorter in length than the majority of the alternative routes [Hunt 7A is in fact a quarter mile shorter than Hunt 37A]; (3) is estimated to be less costly than the majority of the alternative routes [Hunt 7A is effectively the same cost (within the margin of error for cost estimating) as Hunt 37A]; (4) crosses the golden-cheeked warbler modeled habitat for only 66.0 acres [Hunt 7A crosses that modeled habitat for only 76.1 acres and this factor is of less value given that, according to LCRA TSC, none of the routes would have a significant negative impact on the golden-cheeked warbler⁸⁵]; and (5) avoids using segments that TPWD expressed concern about [Hunt 7A also avoids using these segments of concern to TPWD (Segments O, R, S and Z)]. Furthermore, it would avoid routing concerns expressed by a large majority of the intervenors [Hunt 7A is virtually the same on the other criteria, but the stark difference is Hunt 7A spares 7 more directly affected habitable structures, including one that is 8 feet away from the centerline].

VI. CONCLUSION

Intervenors except to the PFD's Conclusion. The following is the PFD's Conclusion. Intervenors' responses are noted in brackets and red text:

Based on the evidence presented, Route Hunt 37A [Hunt 7A] best meets the regulatory and statutory criteria because it:

- is estimated to be the fourteenth least costly route with an estimated cost of \$64,330,000 [Hunt 7A is effectively the same cost (within the margin of error for cost estimating) as Hunt 37A];
- is the tenth shortest route at 22.51 miles [Hunt 7A is in fact a quarter mile shorter than Hunt 37A];
- utilizes paralleling (including all compatible corridors) for 18.9 miles, or 84 percent of its total length, which is 4 percent more than the route recommended by LCRA TSC [Hunt 7A utilizes paralleling at a very close 17.7 miles or 80%];

⁸⁵ Tr. at 109:10 to 110:4 (Meaux) ("As I state in my testimony, the project is not anticipated to significantly adversely impact populations of any federally listed endangered or threatened species, including the golden-cheek warbler.").)

- impacts 37 habitable structures, which is only 12 more than the route that impacts the least habitable structures [Hunt 7A impacts only 30 habitable structures and using 7A over 37A spares seven directly affected habitable structures -- two on Creek House -- one of which is within 8 feet of the ROW, AND Segments L4, I4, H4 of Hunt 7A do not directly affect habitable structures of any other landowner];
- crosses only 66.0 acres of the golden-cheeked warbler modeled habitat, which is approximately 13 acres less than TPWD's recommended route [Hunt 7A crosses that modeled habitat for only 76.1 acres and this factor is of less value given that, according to LCRA TSC, none of the routes would have a significant negative impact on the golden-cheeked warbler⁸⁶];
- avoids using segments that TPWD expressed the most concern about [Hunt 7A also avoids using these segments of concern to TPWD (Segments O, R, S and Z)]; and
- crosses 11.6 miles of areas of high archeological/historic site potential, which is only 1.4 miles more than the route that crosses the least areas of high archeological/historic site potential [Hunt 7A is virtually the same at 11.5 miles].

PARTING PLEA TO PUC

There are many cases where the Honorable Commissioners prudently accept the PFD. There are others—like this one—when wisdom says, “No.” With 58 routes and over 100 segments, there is no reason to route within 8 feet of a habitable structure. Landowners south of C5 should not be excluded from the conversation. The law is no respecter of persons. A landowner should not be allowed to negotiate a new segment without the law hearing from “interested” neighbors—“directly affected” or not. They are not second-class citizens. The Procedural Rules are careful to give way to substantive rights and the authority of the PUC. Due

⁸⁶ Tr. at 109:10 to 110:4 (Meaux) (“As I state in my testimony, the project is not anticipated to significantly adversely impact populations of any federally listed endangered or threatened species, including the golden-cheek warbler.”).

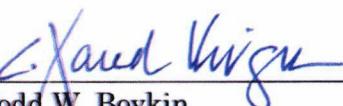
process, equity, and fairness have to override technical rules. Commissioners are appointed for times like this.

WHEREFORE, PREMISES CONSIDERED, Intervenors Creek House Ranch, LLC and Vorpahl Ranch, LP respectfully request that the Public Utility Commission approve the Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line within Gillespie, Kerr, and Kimble Counties only on Route 7A, as that route best complies with the routing factors of PURA and the PUC's Substantive Rules as demonstrated by the totality of the record evidence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on May 3, 2020, a true and correct copy of the foregoing document will be sent for filing with the Public Utility Commission of Texas in accordance with SOAH Order No. 1.



C. Jared Knight