

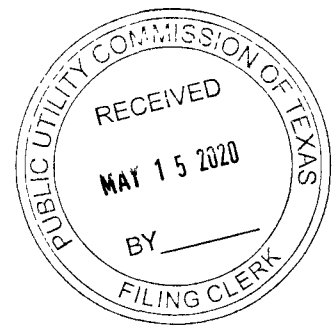


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**DOCKET NO. 49523**  
**SOAH DOCKET NO. 473-19-6766**

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| <b>APPLICATION OF LCRA</b>             | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>TRANSMISSION SERVICES</b>           | <b>§</b> |                                  |
| <b>CORPORATION TO AMEND ITS</b>        | <b>§</b> |                                  |
| <b>CERTIFICATE OF CONVENIENCE</b>      | <b>§</b> | <b>OF</b>                        |
| <b>AND NECESSITY FOR THE</b>           | <b>§</b> |                                  |
| <b>PROPOSED MOUNTAIN HOME 138-</b>     | <b>§</b> |                                  |
| <b>KV TRANSMISSION LINE PROJECT</b>    | <b>§</b> | <b>TEXAS</b>                     |
| <b>IN GILLESPIE, KERR &amp; KIMBLE</b> | <b>§</b> |                                  |
| <b>COUNTIES, TEXAS</b>                 | <b>§</b> |                                  |

**COMMISSION STAFF'S REPLIES TO EXCEPTIONS TO THE  
PROPOSAL FOR DECISION**

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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May 15, 2020

**DOCKET NO. 49523**  
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|  |          |                                  |
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**COMMISSION STAFF’S REPLIES TO EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The conclusions reached by the Administrative Law Judges (ALJs) in the Proposal for Decision (PFD) are correctly decided and should be maintained over intervenor objections. The Staff (Staff) of the Public Utility Commission of Texas (Commission) remains grateful for the reasoned consideration of the ALJs, and Staff supports their conclusions in the PFD.

In addition, Staff responds to certain exceptions raised by specific intervenors, Creek House Ranch, LLC ("Creek House") and Vorpahl Ranch, LP ("Vorpahl") (collectively, "Excepting Intervenors"). These replies to exceptions will address the topics of notice, cost, and route selection.

**IV. NOTICE**

The Excepting Intervenors assert that Segment C5, a segment that was modified to accommodate a landowner in this proceeding, is not a viable segment due to perceived notice concerns , and that consequently Route Hunt 37A is not viable.<sup>1</sup> Staff disagrees and contends that both Segment C5 and therefore Route Hunt 37A are viable.

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<sup>1</sup> Creek House and Vorpahl Exceptions to the PFD at 2.

The Excepting Intervenor contend that Lower Colorado River Authority Transmission Services Corporation (LCRA TSC) violated applicable statutes and the associated Commission rules regarding notice of public open house meetings.<sup>2</sup> The Public Utility Regulatory Act<sup>3</sup> (PURA) § 37.054 requires that when an application for a certificate is filed, the commission shall . . . give notice of the application to interested parties. . . .<sup>4</sup> Further, the Excepting Intervenor note that 16 TAC § 22.52(a)(4) requires 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.<sup>5</sup>

LCRA TSC complied with PURA § 37.054 and held two public meetings as required by 16 TAC § 22.52(a)(4). The first public meeting was conducted on June 26, 2018.<sup>6</sup> LCRA TSC sent notices of the meeting to all landowners owning property within 300 feet of each of the proposed alternative route segment centerlines, as they then existed, as well as the Department of Defense Clearinghouse.<sup>7</sup> LCRA TSC also published notice of the meeting in the Fredericksburg Standard-Radio Post, the Junction Eagle, the Kerrville Daily Times and the West Kerr Current.<sup>8</sup> A second open house meeting was conducted on November 7, 2018.<sup>9</sup> LCRA TSC mailed notices to all the landowners on alternative route segments that were added in response to the first open house meeting.<sup>10</sup> Additional notices were sent to elected officials and other interested parties including

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<sup>2</sup> Creek House and Vorpahl Exceptions to the PFD at 3.

<sup>3</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

<sup>4</sup> PURA § 37.054 (a)(1)

<sup>5</sup> Creek House and Vorpahl Exceptions to the PFD at 3.

<sup>6</sup> LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) at 4-3.

<sup>7</sup> *Id.*

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

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.*

the Department of Defense Clearinghouse.<sup>11</sup> LCRA TSC also published notice of the meeting in the Fredericksburg Standard-Radio Post, the Kerrville Daily Times, and the West Kerr Current.<sup>12</sup>

Segment C5 was not presented by LCRA TSC until September 30, 2019, when it was presented in response to a request from an intervening landowner.<sup>13</sup> Staff's position is that this was clearly a modification to one of LCRA TSC's proposed routes. The relevant rule regarding route modifications is 16 TAC § 22.52(a)(3)(C) and states that "before 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." The definition of a "directly affected" landowner is established by 16 TAC § 22.52(a)(3), which states 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 230 kV or less . . ."<sup>14</sup> According to LCRA TSC, all directly affected landowners, as that term is defined by 16 TAC § 22.52(a)(3), were provided notice as required by 16 TAC § 22.52(a)(3)(A) and 16 TAC § 22.52(a)(3)(B).<sup>15</sup> Staff witness John Poole stated at the hearing on the merits that Staff agrees with LCRA TSC that proper notice was provided to all directly affected landowners and consequently finds that Segment C5 is a viable route segment.<sup>16</sup> The Excepting Intervenor does not assert that LCRA TSC violated 16 TAC § 22.52(a)(3)(C). Instead, their argument hangs on the supposition that LCRA TSC was required to provide notice beyond what 16 TAC § 22.52(a)(3)(C) requires. However, the Commission is bound to follow the clear, unambiguous language of its own regulation.<sup>17</sup> Here, Segment C5 was clearly a modification to one of LCRA TSC's proposed routes,

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<sup>11</sup> LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) at 4-5.

<sup>12</sup> LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) at 4-5 and 4-6.

<sup>13</sup> LCRA TSC Ex. 9 at 5.

<sup>14</sup> 16 TAC § 22.52(3)(C).

<sup>15</sup> Tr: 242-243 (Wenmohs Cross) (Jan. 22, 2020).

<sup>16</sup> Tr: 294:23-25 (Poole Cross) (Jan. 22, 2020).

<sup>17</sup> *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254-255 (Tex. 1999) ("If the Commission does not follow the clear, unambiguous language of its own regulation, we reverse its action as arbitrary and capricious.")

made to accommodate a landowner request and the notice rules that are applicable to such a modification are unambiguous and are found in 16 TAC § 22.52(a)(3)(C).

The excepting intervenors did not present any evidence that LCRA TSC failed to provide notice in accordance with 16 TAC § 22.52(a)(3)(C).

## **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)?**

#### **7. Costs (and Length)**

The Excepting Intervenors also claim that, because the cost estimates provided by LCRA TSC are only estimates and that Route Hunt 7A, the Excepting Intervenors preferred route, “only” costs \$120,000 more than Route Hunt 37A, that “effectively, Route Hunt 7A costs the same as Route Hunt 37A.”<sup>18</sup> While it is true that the cost estimates provided by LCRA TSC are only estimates, the methodology used to arrive at those cost estimates are utilized in formulating the cost estimates for all of LCRA TSC’s proposed routes. It follows then, that if the cost estimate of any particular route is overstated or understated, all of the other proposed routes would be under- or over-stated to the same degree. The Excepting Intervenors do not provide any rationale explaining why the cost estimates for Route Hunt 7A are overstated or why the cost estimates for Route 37A are understated. In fact, Route Hunt 7A is estimated to cost \$120,000 more than Route Hunt 37A.

## **XV. CONCLUSION**

As stated above, Staff supports the reasoned conclusions of the ALJ in the PFD and respectfully requests the adoption of Staff’s position on the foregoing issues.

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<sup>18</sup> Creek House and Vorpahl Exceptions to the PFD at 9.

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 15, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater  
Rustin Tawater