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

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

MAXIMINO "MAX" MICHEL-GONZALEZ D/B/A BETA
REAL ESTATE LLC AND SAVOY LTD'S REPLY TO
EXCEPTIONS TO THE PROPOSAL FOR DECISION

May 15, 2020

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I. INTRODUCTION AND SUMMARY

A. Route Hunt 7A is inferior to other options and imposes disproportionate harm on Mr. Michel-Gonzalez.

The Creek House Ranch (Creek House) and Vorphal Ranch (Vorphal) stand alone in supporting Route Hunt 7A, and seek to shift the impacts of the proposed line onto their neighbors¹—in particular, Mr. Michel-Gonzalez (on Segments I and H4), the Bar J Bar Ranch (on Segment H4),² and pro se intervenor Ms. Short (on Segment I4).³ The Commission should not select Route Hunt 7A because it is inferior to both the PFD’s recommended Route Hunt 37A and Mr. Maximino “Max” Michel-Gonzalez, d/b/a Beta Real Estate LLC and Savoy Ltd.’s (“Mr. Michel-Gonzalez’s”) preferred Route Hunt 5A under the relevant routing criteria.⁴ Additionally,

¹ See Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 157:22-158:5 (Jan. 21, 2020) (“Q: [Route Hunt 7] follows Segment I to H4, I4, and then L4, correct? A: That’s correct. Q: So none of those links impact the Creek House Ranch at all, do they? A: None of those segments that we listed directly affect, as that term is used, in the Public Utility Commission substantive rules, the Creek House Ranch property.”).

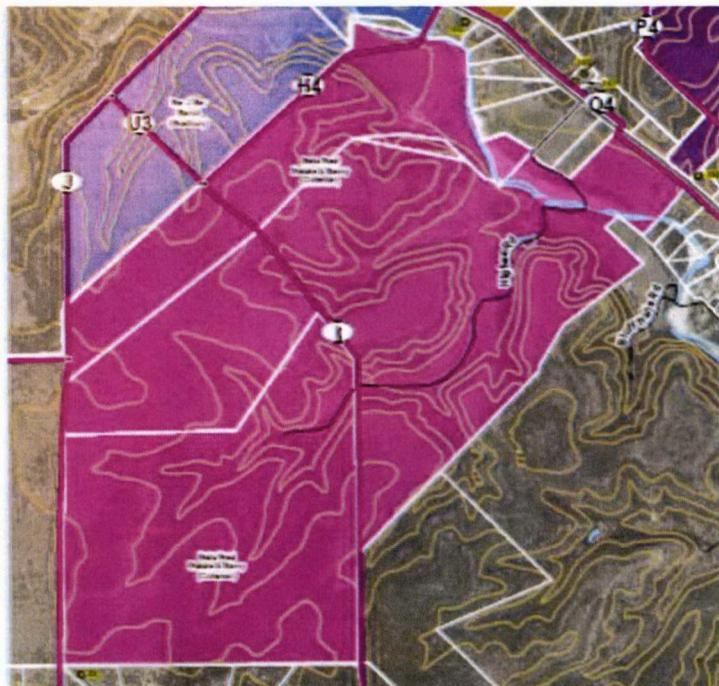
² Segments H4 and I4 would run downhill from and within view of habitable structures on the Bar J Bar Ranch. See Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 114:1-115:20 (Jan. 21, 2020); see also Bar J Bar Initial Br. at 3 (“Not only would a route including segment H4 require bisecting the Beta-Savoy Tract, it also brings the transmission line within close proximity to the habitable structures on the Bar J Bar Ranch property.”).

³ Segment I4 would cut through the middle of Ms. Short’s property. Tr. (Cr. of LCRA TSC Panel - Meaux) at 133:19-22 (Jan. 21, 2020).

⁴ See Section V.D.1, *infra*.

Route Hunt 7A would severely and disproportionately harm Mr. Michel-Gonzalez along Segments I and H4 by cutting his 1,600 acre ranch almost exactly in half.⁵ As explained in detail below, Route Hunt 7A would conservatively require **2.1 miles** of right-of-way (ROW)⁶ across Mr. Michel-Gonzalez's property—which is approximately **9.43% of the total ROW⁷**—and of that 2.1 miles, ***at least 1.6 miles would not follow property boundaries or any other existing corridor.***⁸ The harm that Segments I and H4 would impose on Mr. Michel-Gonzalez's ranch is illustrated below:

Figure 1: Segments I and H4 Bisecting the Michel-Gonzalez Property⁹



As explained by ranch manager Dan Kuykendall, Segment I would pass through some of the most heavily vegetated and scenic areas of the property,¹⁰ and due to its orientation,

⁵ Tr. (Cross of LCRA TSC Panel - Meaux) at 132:13-21 (Jan. 21, 2020).

⁶ See Section V.D.2, *infra*.

⁷ Route Hunt 7A is 22.26 miles long, and [2.1 miles / 22.26 miles] = **9.43%**

⁸ 2.1 miles of total ROW - 0.52 miles paralleling property boundaries on Segment H4 = **1.6 miles**

⁹ Excerpted from LCRA TSC Ex. 2 (Large Intervenor Map).

¹⁰ Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 9.

transmission towers along Segment I would be visible from the majority of the ranch.¹¹ Route Hunt 7A would not, as Creek House and Vorpal suggest, merely cut through backwoods on the Michel-Gonzalez ranch, but would unnecessarily cut the property in half. Perhaps even worse, Segment H4 would dominate the views from Mr. Michel-Gonzalez's home, with only an empty field between the home's north-facing windows and the proposed line location (which, again, fails to follow property boundaries on the northeastern corner of the ranch).¹²

The Commission should not fragment Mr. Michel-Gonzalez's ranch in this manner when there are other routes that avoid these impacts and perform *better* under the factors the Commission has historically prioritized. As Mr. Michel-Gonzalez has emphasized throughout this proceeding, he understands that electrical infrastructure must go somewhere, and he is not looking to avoid the impact of the line altogether. He asks only that the Commission select one of the many options that conforms with routing precedent and does not split his ranch in two. As explained in his Exceptions, Mr. Michel-Gonzalez is willing to accept either Route Hunt 5A¹³ or Hunt 37A, making him one of only three intervenors that have tried to find a suitable location for the line on their properties.¹⁴

B. Route Hunt 5A is the best alternative to the PFD's selected Route Hunt 37A.

Mr. Michel-Gonzalez continues to support Route Hunt 5A even though it follows his western property boundary along Segments C and J.¹⁵ If the Commission selects one of the central Hunt routes, it must choose between Segment C or Segment F. Segment C, which is a part of Route Hunt 5A, follows existing property lines as it heads directly northward from the Hunt

¹¹ *Id.*

¹² See Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 6, Figure 4 (view of home) and 9-10, Figure 9 (view from home toward proposed location of Segment H4).

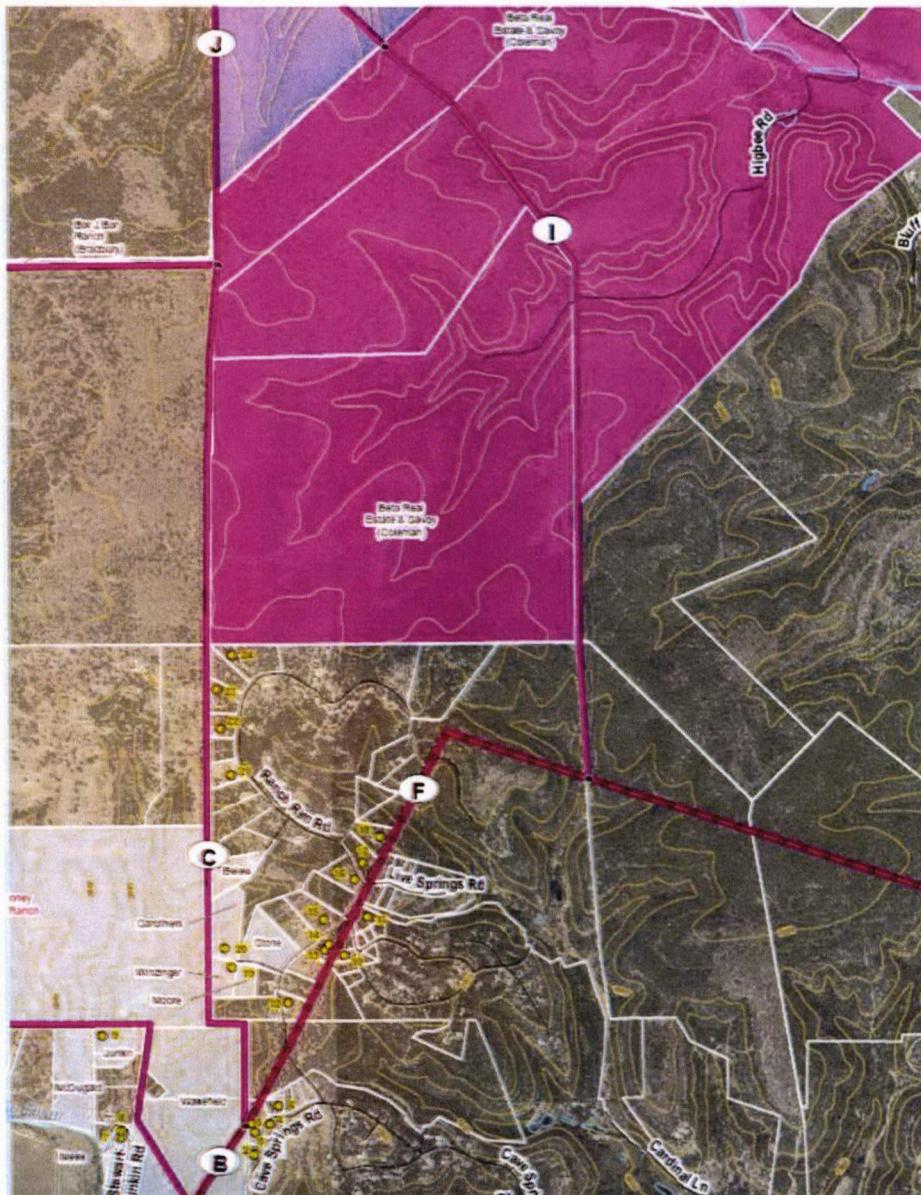
¹³ Mr. Michel-Gonzalez's Exceptions referred to Route Hunt 5, but he is equally willing to accept Hunt 5A.

¹⁴ LCRA TSC Ex. 9 (Wenmohs Reb.) at 3-4; *see also* Tr. (Cross of LCRA TSC Panel - Wenmohs) at 156:12-157:3 (Jan. 21, 2020). Following the hearing, Apache Springs became the third landowner to propose a consented alternative route segment. See LCRA TSC Ex. 15 (Cost Estimates, Land Use, and Environmental Data for Routes Hunt 5A, Hunt 7A, Hunt 31A, Hunt 36A, and Hunt 37A) and LCRA TSC Ex. 16 (Modified Version of LCRA TSC Ex. 13).

¹⁵ Mr. Michel-Gonzalez does not oppose the modifications requested by the Bar J Bar Ranch and Mr. Duncan along Segment V4.

substation. Segment F, on the other hand, takes a less direct eastern path that has little regard for property boundaries.

Figure 2: Segments C and J Compared to Segments F and I¹⁶



In addition to taking the most rational and least harmful path out of the Hunt substation, Route Hunt 5A also best satisfies the Commission's primary routing criteria, as it is the ***shortest***,

¹⁶ Excerpted from LCRA TSC Ex. 2 (Large Intervenor Map).

least expensive, and also impacts the *fewest habitable structures*.¹⁷ Importantly, if the Commission selects Hunt 5A, Mr. Michel-Gonzalez is willing to accept the northern portion of Segment C *on his property*, mitigating the impact on his neighbor to the west.¹⁸ Collectively, these factors support adopting Hunt 5A over the alternatives.

C. Route Hunt 37A is the best route if the Commission wishes to rebuild an existing transmission line along Segment F.

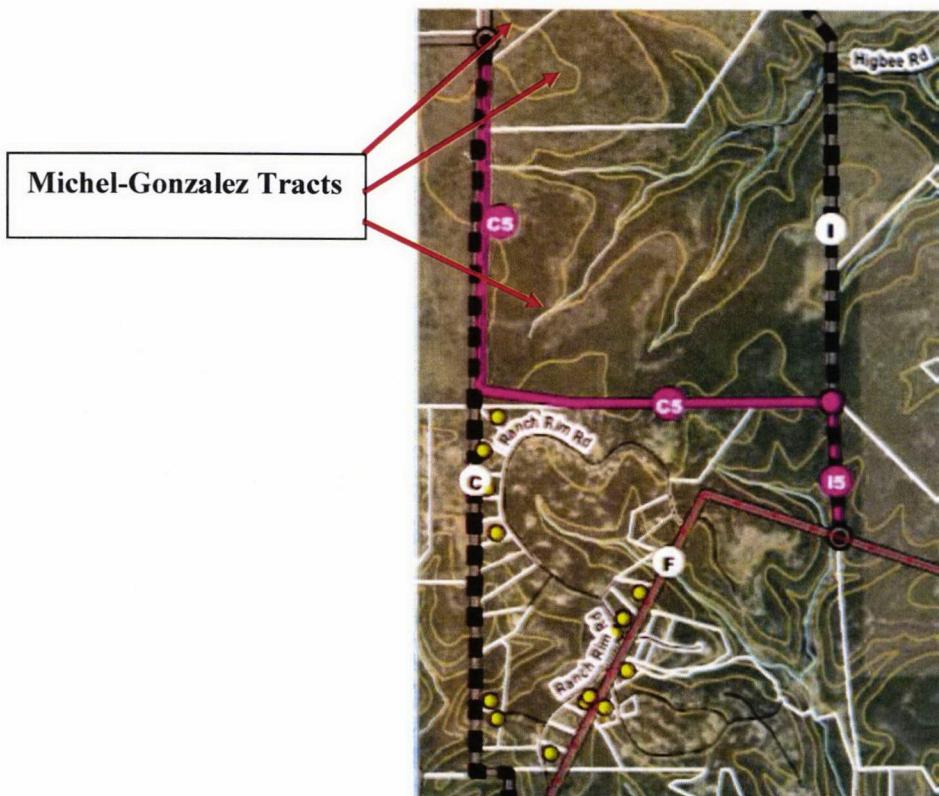
At the hearing, some parties argued that the Commission should use Segment F to leave the Hunt substation because Segment F includes rebuilding approximately 1.58 miles of existing LCRA transmission line¹⁹—even though routes that use Segment F generally perform worse under the routing criteria than routes using Segment C. Mr. Michel-Gonzalez does not support using Segment F because it requires also constructing either Segment I or Segment C5. Both of those segments have uniquely harmful impacts on Mr. Michel-Gonzalez’s ranch. Segment I bisects his property, as discussed above, and Segment C5 borders two entire sides of the ranch. However, if this choice is unavoidable, Mr. Michel-Gonzalez prefers (and has consented to) Segment C5, illustrated below:

¹⁷ See LCRA TSC Ex. 15 (Updated Route Cost and Data Chart) at 1.

¹⁸ Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 11; Tr. (Cross of LCRA TSC Panel - Symank) at 146:4-9 (Jan. 21, 2020).

¹⁹ E.g., Tr. (Wehmohs Cr.) at 69:18-20 (Jan. 20, 2020).

Figure 3: Consented Segment C5²⁰



The PFD's recommended Route Hunt 37A includes Segment C5. While Route Hunt 37A does not perform as well as Hunt 5A under the most important routing criteria,²¹ it at least avoids unnecessarily bisecting Mr. Michel-Gonzalez's property along Segment I. Using Segment C5 instead of Segment I also prevents the line from bisecting Mr. Michel-Gonzalez's neighbors to the north. After Segment I, the line must either cross the Bar J Bar Ranch on Segment U3 or pro se intervenor Ms. Short's property on Segment I4. Importantly, even though a greater length of Segment C5 would be on Mr. Michel-Gonzalez's property than Segment C (along Route Hunt 5A), Mr. Michel-Gonzalez has consented to Segment C5²² to give the Commission a reasonable pathway along his property lines if the Commission approves a route that uses Segment F. Both

²⁰ See LCRA TSC Ex. 9 (Wenmohs Reb.) at Exhibit LW-1R, page 1.

²¹ With the exception of paralleling property boundaries and existing compatible ROW. See LCRA TSC Ex. 15 (Updated Route Cost and Data Chart).

²² See LCRA TSC Ex. 9 (Wenmohs Reb.) at Exhibit LW-2R.

LCRA TSC's and Commission Staff's witnesses have indicated that Segment C5 is viable,²³ forward-progressing,²⁴ and will not require additional notice because it does not "directly affect"²⁵ any landowner other than Mr. Michel-Gonzalez.²⁶ Accordingly, if the Commission adopts a route other than Hunt 5A, it should follow the PFD in selecting Route Hunt 37A, which uses Segment C5 to avoid harmfully and unnecessarily bisecting Mr. Michel-Gonzalez's property.

IV. NOTICE

Creek House and Vorpal have attempted to interfere with Mr. Michel-Gonzalez's ability to request reasonable routing modifications on his own property by manufacturing a legally baseless notice defect to challenge the viability of Segment C5.²⁷ The PFD correctly rejected these arguments, and the Commission should follow suit.

The Commission's rules only require additional notice of a CCN proceeding if a route modification would "directly affect" landowners who have not already received notice. PUC Procedural Rule § 22.52(a)(3)(C) states 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.*"²⁸ In the context of that rule, "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."²⁹

²³ See Tr. (Poole Cr.) at 294:23-25 (Jan. 22, 2020); Tr. (Cross of LCRA TSC Panel – Wenmohs) at 122:13-15 (Jan. 21, 2020).

²⁴ Tr. (Cross of LCRA TSC Panel - Wenmohs) at 95:4-12. (Jan. 21, 2020); Tr. (Poole Cr.) at 290:25-291:3 (Jan. 22, 2020).

²⁵ As that term is defined in 16 TAC § 25.101.

²⁶ Tr. (Cross of LCRA TSC Panel - Wenmohs) at 92:14-93:17 (Jan. 21, 2020); Tr. (Poole Cr.) at 310:9-19 (Jan. 22, 2020).

²⁷ Creek House and Vorpal Exceptions at 2-6.

²⁸ Emphases added.

²⁹ PUC Proc. R. § 22.52(a)(3).

Mr. Michel-Gonzalez is the only landowner who would be “directly affected” by the Segment C5 modification.³⁰ The entire ROW for Segment C5 is within Mr. Michel-Gonzalez’s property,³¹ and there are *zero* habitable structures within 300 feet³² of that segment.³³ At the hearing, both LCRA TSC and Staff witnesses confirmed that Segment C5 is viable³⁴ and forward-progressing,³⁵ and does *not* create notice issues because it does not “directly affect”³⁶ any landowner other than Mr. Michel-Gonzalez.³⁷

Creek House and Vorphal do not claim that the landowners to the south of Segment C5 are “directly affected” by that segment and therefore due notice of the modification under Commission Procedural Rule § 22.52. Instead, they argue that those landowners would have received notice of LCRA TSC’s Open House meeting³⁸ if Segment C5 had been among LCRA TSC’s original routing segments.³⁹ While that is true, it does not follow that those landowners are now entitled to additional notice of a proposed modification that does not “directly affect” their properties.

³⁰ Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 92:21-93:2 (Jan. 21, 2020) (“**Segment C5 has been drawn in such a manner that it doesn’t implicate any notice requirements.** It is contained, as I said earlier, wholly on the property owned by Beta-Savoy, and it’s not located within 300 feet of any habitable structures that would be entitled to notice pursuant to the notice requirements of the PUC.”) (emphasis added); *see also* Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 92:17-18 (Jan 21, 2020) (LCRA TSC checked for habitable structures within 300 feet of Segment C5 as late as the Friday before the hearing began); Tr. (Poole Cr.) at 302:5-7 (Jan. 22, 2020) (“I know that C5 doesn’t have any additional habitable structures within 300 feet based on the data that was given me.”).

³¹ Tr. (Cross of LCRA TSC Panel – Wenmohs) at 91:21-23 (“C5 would be wholly contained within the property owned by Beta Real Estate and Savoy.”).

³² It is worth noting that the map excerpt on page 5 of Creek House and Vorphal’s Exceptions misrepresents the location of Segment C5. Not only does the entire ROW for that segment run within Mr. Michel-Gonzalez’s property, it also jogs to the north before it meets proposed Segment C to ensure that it stays at least 300 feet from any habitable structure. Segment C5 is correctly illustrated in Figure 3 above.

³³ Michel-Gonzalez Ex. 3 (LCRA’s Response to Mr. Michel-Gonzalez’s 1st Request for Information) at Attachment Michel-Gonzalez 1-1, page 1 of 2.

³⁴ See Tr. (Poole Cr.) at 294:23-25 (Jan. 22, 2020); Tr. (Cr. of LCRA TSC Panel – Wenmohs) at 122:13-15 (Jan. 21, 2020).

³⁵ Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 95:4-12. (Jan. 21, 2020); Tr. (Poole Cr.) at 290:25-291:3 (Jan. 22, 2020).

³⁶ As that term is defined in 16 TAC § 25.101.

³⁷ Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 92:14-93:17 (Jan. 21, 2020); Tr. (Poole Cr.) at 310:9-19 (Jan. 22, 2020).

³⁸ See Creek House and Vorphal Exceptions at 3 (citing 16 TAC § 22.52(a)(4)).

³⁹ Creek House and Vorphal Exceptions at 2-3.

Nothing in PURA or the Commission's rules mandates additional notice of Open House meetings after a CCN application has already been filed, and in any event, holding another Open House meeting at this point would be impractical and unproductive.

The Commission has previously found that a utility is not required to notice or hold additional Open House meetings after it has filed its application, *even if it amended the proposed routing segments between the time of the Open House meeting and the CCN filing*.⁴⁰ In Docket No. 11014, Pedernales Electric Cooperative, Inc. (Pedernales) noticed and held two Open House meetings for a transmission line project in July of 1990.⁴¹ After those open houses, Pedernales did not file its CCN application until 1992, and then re-filed an amended application *with modified routes* in 1994, followed by a Supplemental Phase amendment that dealt with undergrounding certain portions of the line.⁴² In that proceeding, the ALJs found that there was no legal requirement for Pedernales to notice or hold additional Open House meetings after a CCN application has been filed.⁴³ Specifically, the ALJ stated:

The issue of whether one open house for the Wimberley community on a busy week night five years ago was enough is more an issue of appropriate community involvement than of notice; however, as the utility points out, the goal of open houses is to obtain community input before planning progresses too far and *certainly before an application is filed*. Possibly, it would have been helpful for the utility to conduct another open house before filing its amended application in 1994. *Failure to have done so, however, does not constitute a legal deficiency*.⁴⁴

⁴⁰ Application of Pedernales Electric Cooperative, Inc. to Amend Certificate of Convenience and Necessity for Proposed Transmission Line Within Hays County, Docket No. 11014, Order at CoL 3 (Dec. 22, 1995) ("The notice provided by the Commission complies with PURA §2.255(a), with P.U.C. PROC. R. 22.54(a), and with §2001.51 of the Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001.001 et seq. (Vernon 1994)").

⁴¹ Docket No. 11014, PFD at 10 (Sept. 29, 1995).

⁴² *Id.* at 11-12.

⁴³ Confirming this practice, the Commission's current "Landowners and Transmission Line Cases at the PUC" brochure makes clear that routing modifications can be made after an application is filed. LCRA TSC Ex. 1 (Application) at Attachment 9, p. 26 ("[T]he possibility exists that additional routes may be developed, *during the course of a CCN case*, that could affect property in a different manner than the original routes proposed by the applicant.") (emphasis added).

⁴⁴ Docket No. 11014, PFD at 15-16.

The Commission agreed⁴⁵ that Pedernales provided legally sufficient notice by mailing only “directly affected” landowners regarding its 1992 Application, 1994 Amended Application, and an additional Supplemental Phase.⁴⁶ Accordingly, it is clear that Creek House and Vorphal’s argument regarding notice of Open House meetings is baseless, and Segment C5 is available for the Commission to select.

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 Commission should not select Creek House and Vorphal’s preferred Route Hunt 7A because it (1) performs worse than either Route Hunt 5A or Hunt 37A under the Commission’s routing factors and (2) places a disproportionate burden on Mr. Michel-Gonzalez’s property by following both Segments I and H4. Creek House and Vorphal are the only intervenors who support Route Hunt 7A, which would avoid their properties while shifting the burden of this line onto their neighbors⁴⁷—specifically, Mr. Michel-Gonzalez (on Segments I and H4), the Bar J Bar Ranch (on Segment H4),⁴⁸ and pro se intervenor Ms. Short (on Segment I4).⁴⁹

⁴⁵ Docket No. 11014, Order at CoL 3 (Dec. 22, 1995) (“The notice provided by the Commission complies with PURA §2.255(a), with P.U.C. PROC. R. 22.54(a), and with §2001.51 of the Administrative Procedure Act, TEX. GOV’T. CODE ANN. § 2001.001 et seq. (Vernon 1994)”).

⁴⁶ Docket No. 11014, PFD at 15-16.

⁴⁷ See Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 157:22-158:5 (Jan. 21, 2020) (“Q: [Route Hunt 7] follows Segment I to H4, I4, and then L4, correct? A: That’s correct. Q: So none of those links impact the Creek House Ranch at all, do they? A: None of those segments that we listed directly affect, as that term is used, in the Public Utility Commission substantive rules, the Creek House Ranch property.”).

⁴⁸ Segments H4 and I4 would run downhill of and within view of Bar J Bar habitable structures. See Tr. (Cr. of LCRA TSC Panel - Wenmohs) at 114:1-115:20 (Jan. 21, 2020); see also Bar J Bar Initial Br. at 3 (“Not only would a route including segment H4 require bisecting the Beta-Savoy Tract, it also brings the transmission line within close proximity to the habitable structures on the Bar J Bar Ranch property.”).

⁴⁹ Segment I4 would cut through the middle of Ms. Short’s property. Tr. (Cr. of LCRA TSC Panel - Meaux) at 133:19-22 (Jan. 21, 2020).

1. Routes Hunt 5A and Hunt 37A both outperform Route Hunt 7A under the Commission's routing factors.

The following chart compares the performance of Routes Hunt 5A, 7A, and 37A across the most relevant of the Commission's traditional routing factors:

Chart 1: Statistical Performance of Routes Hunt 5A, 7A, and 37A ⁵⁰							
Route	Cost (\$M)	Length (miles)	Paralleling %	Length NOT parallel to property boundaries or compatible ROW	Habitable structures within 300 ft.	Length of ROW in foreground visual zone of IH, US, and state highways	Impact on Golden Cheeked Warbler Habitat
Hunt 5A	\$61.22	20.98	82%	3.88 miles	26	2.90 miles	62.0 acres
Hunt 7A	\$64.45	22.26	80%	4.56 miles	30	4.19 miles	76.1 acres
Hunt 37A	\$64.33	22.51	84%	3.61 miles	37	2.83 miles	66.0 acres

It is indisputable that Route Hunt 5A outperforms Route Hunt 7A under the Commission's routing criteria. As the chart demonstrates, Route Hunt 7A is 1.28 miles longer than Route Hunt 5A, costs **\$3.23 million** more, impacts a total of four additional habitable structures, and spends an additional 0.68 miles (or 2% of its length) *not* paralleling property boundaries or compatible ROW.⁵¹ Creek House and Vorpal have not provided a persuasive reason for the Commission to spend millions more on a longer route that impacts more habitable structures and spends more time cutting across landowners' property. Accordingly, if the Commission deviates from the PFD's recommended Route Hunt 37A, it should select Route Hunt 5A rather than Hunt 7A.

Route Hunt 37A also outperforms Route Hunt 7A. Route 37A costs \$0.12 million less than Hunt 7A, and parallels property boundaries and compatible ROW for all but 3.61 miles of its

⁵⁰ See LCRA TSC Ex. 4 (Route Cost and Data Chart).

⁵¹ See LCRA TSC Ex. 15 (Updated Route Cost and Data Chart).

length compared to 4.56 miles for Route Hunt 7A.⁵² Creek House and Vorpal point out that Route Hunt 7A passes within 300 feet of fewer habitable structures than Route Hunt 37A. However, *only two* of those additional structures are located south of I-10 (both of which are on the Creek House property), and no party on the north side of I-10 excepted to the PFD's selection of Route Hunt 37A.⁵³ Taken as a whole, these factors indicate that Route Hunt 37A is a superior choice, especially because it avoids placing a disproportionate burden on Mr. Michel-Gonzalez by unnecessarily bisecting his property, as discussed below.

2. Route Hunt 7A would severely and disproportionately harm Mr. Michel-Gonzalez's property.

As mentioned above, Mr. Michel-Gonzalez's family has owned his contiguous, 1,600-acre ranch for decades.⁵⁴ Building a transmission line along Segments I and H4 (both of which are included in Route Hunt 7A) would dramatically impact that property. The Michel-Gonzalez family prizes the ranch for its unspoiled beauty, and other than a single distribution feeder that serves Mr. Michel-Gonzalez's home on the far eastern end of the property, it is currently unburdened by infrastructure or other cleared rights-of-way. However, due to the orientation of Segment I, transmission towers along that segment would be visible from the majority of the ranch.⁵⁵ Further, Segment I would parallel or cross approximately *1.78 miles* of Mr. Michel-Gonzalez's property,⁵⁶ and would require permanently clearing a 100-foot ROW for about *1.3*

⁵² *Id.* (Route Hunt 5A parallels property boundaries and compatible ROW for 82% of its length, compared to 80% for Route Hunt 7A).

⁵³ See LCRA TSC Ex. 2 (Large Intervenor Map).

⁵⁴ Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 5.

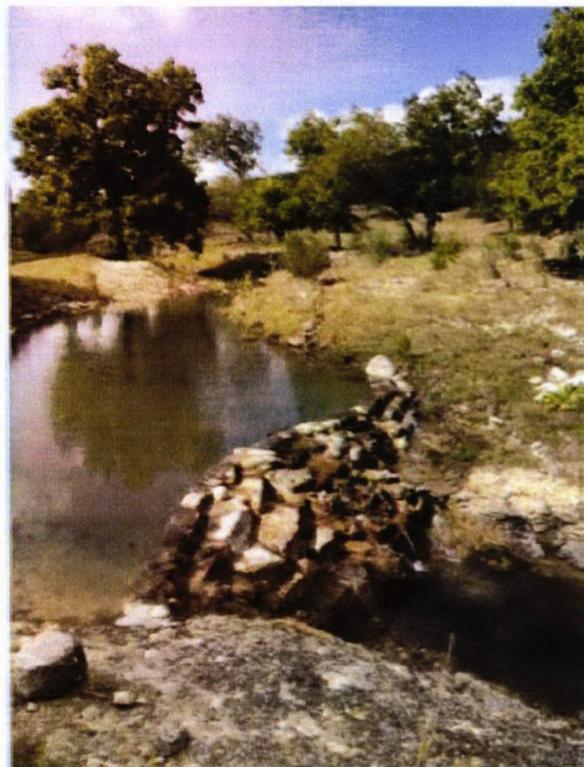
⁵⁵ *Id.* at 9.

⁵⁶ This number can be calculated as follows:

- Segment I is 2.15 miles long. See LCRA TSC Ex. 1 (Application) at Attachment 1 (Environmental Assessment) Page 5-9, Table 5-2 (data for Segment I). The length of Segment I that parallels or falls within Mr. Michel-Gonzalez's property can be calculated by subtracting the length of Segment I5, which lies almost entirely to the south of Mr. Michel-Gonzalez's property on Tract E4-065. Segment I5 is 0.37 miles long. See Michel-Gonzalez Ex. 3 (LCRA's Response to Mr. Michel-Gonzalez's 1st Request for Information at Attachment Michel-Gonzalez 1-1, page 1 of 2). Accordingly, **Segment I either parallels the boundary of Mr. Michel-Gonzalez's Tract I-002 or runs across Mr. Michel-Gonzalez's Tracts I-003 or H4-001 for 1.78 miles.**

*miles*⁵⁷ across some of the most densely forested areas of the ranch.⁵⁸ In fact, Segment I alone would place approximately **5.8% of the total ROW⁵⁹** for this line through the middle of Mr. Michel-Gonzalez's property, without following any natural features, which would significantly disrupt that property and the Michel-Gonzalez family's enjoyment of it. For instance, Segment I would be constructed a short distance from a picturesque swimming hole, shown below:

Figure 4: Swimming Hole on Tributary of Johnson Creek Near Path of Segment I⁶⁰



⁵⁷ This number can be calculated as follows:

- As shown above, Segment I either parallels the boundary of Mr. Michel-Gonzalez's Tract I-002 or runs across Mr. Michel-Gonzalez's Tracts I-003 or H4-001 for 1.78 miles, and the majority of that distance is actually on Mr. Michel-Gonzalez's property. The distance scale on page 2 of LCRA TSC Ex. 2 (Large Intervenor Map) can be used to show that the portion of Segment I that parallels the boundary of Tract I-002 (but is actually located on neighboring Tract I-001) is approximately 0.4 miles. Even conservatively increasing this measurement to 0.5 miles shows that **Segment I would require at least 1.28 miles of right-of-way across Mr. Michel-Gonzalez's property.**

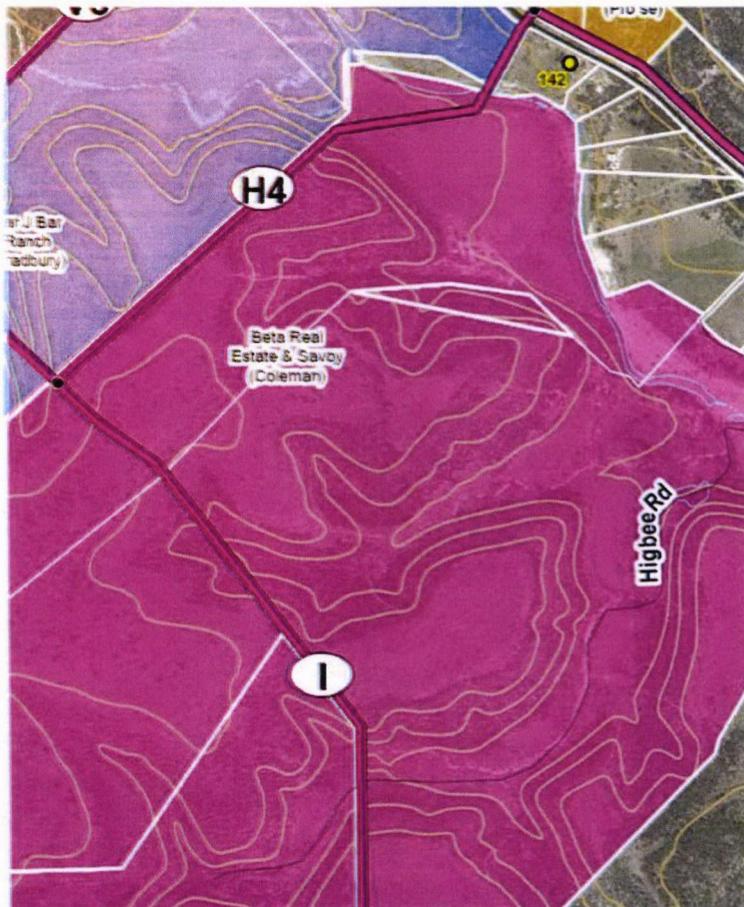
⁵⁸ Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 9.

⁵⁹ For instance, Route Hunt 7A is 22.26 miles long, and [1.3 miles / 22.26 miles] = **5.8%**

⁶⁰ Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 9.

Worse, after bisecting Mr. Michel-Gonzalez's ranch along Segment I, Route Hunt 7A would then take a right turn to follow Segment H4, which would be constructed inside Mr. Michel-Gonzalez's property until it crosses Johnson Creek.⁶¹

Figure 5: Path of Segment H4 Across Michel-Gonzalez Property⁶²



⁶¹ Tr. (Cr. of LCRA TSC Panel - Meaux) at 132:22-133:7 (Jan. 21, 2020).

⁶² LCRA TSC Ex. 2 (Large Intervenor Map).

Segment H4 would require at least an additional **0.82 miles** of ROW on Mr. Michel-Gonzalez's property,⁶³ and that ROW would deviate from his property line for about **0.3 miles**,⁶⁴ isolating the northeastern corner of his land.⁶⁵ So all told, across Segments I⁶⁶ and H4, Route Hunt 7A would conservatively require **2.1 miles** of ROW across Mr. Michel-Gonzalez's property—which is approximately **9.43% of the total ROW**⁶⁷—and of that 2.1 miles, **at least 1.6 miles would not follow property boundaries.**⁶⁸ Route Hunt 7A would also parallel Mr. Michel-Gonzalez's southeastern property boundary for an additional 0.4 miles.⁶⁹

Creek House and Vorpal try to downplay the impact of Route 7A on Mr. Michel-Gonzalez's ranch simply because the habitable structures on the ranch would not be within 300 feet of the line. However, as explained in the direct testimony of ranch manager Dan Kuykendall, Segment H4 would dominate the views from Mr. Michel-Gonzalez's home, with only an empty field between the home's north-facing windows and proposed location of the line, which departs from property boundaries and cuts across the northeastern corner of the ranch.⁷⁰ The line would be placed in the foreground of the view below:

⁶³ This number can be calculated as follows:

- Segment H4 is 1.07 miles long. *See LCRA TSC Errata, Attachment 4.* Segment H4 lies almost entirely within Mr. Michel-Gonzalez's property, and only leaves his property after crossing Johnson Creek. The distance scale on page 2 of LCRA TSC Ex. 2 (Large Intervenor Map) can be used to show that it is less than 0.25 miles between where Segment H4 leaves Mr. Michel-Gonzalez's property as it crosses Johnson Creek and the northern terminus of Segment H4 where it connects to Segment I4. Conservatively increasing that estimate to 0.25 miles shows that **Segment H4 would require at least 0.82 miles of right-of-way across Mr. Michel-Gonzalez's property.**

⁶⁴ LCRA TSC Errata, Attachment 4 (Segment H4 is 1.07 miles long and parallels property boundaries for 72% of its length, meaning that 0.3 miles do not parallel property boundaries.).

⁶⁵ Tr. (Cr. of LCRA TSC Panel - Meaux) at 133:8-18 (Jan. 21, 2020); *see also* LCRA TSC Ex. 2 (Large Intervenor Map).

⁶⁶ *See notes 56-57, supra* (calculating impact of Segment I on Mr. Michel-Gonzalez).

⁶⁷ For instance, Route Hunt 31 is 22.45 miles long, and [2.1 miles / 22.45 miles] = **9.35%**

⁶⁸ 2.1 miles of total ROW - 0.52 miles paralleling property boundaries on Segment H4 = **1.6 miles**

⁶⁹ Michel-Gonzalez Initial Br. at 15, note 75.

⁷⁰ *See* Michel-Gonzalez Ex. 1 (Kuykendall Dir.) at 6, Figure 4 (view of home) and 9-10, Figure 9 (view from home toward proposed location of Segment H4).

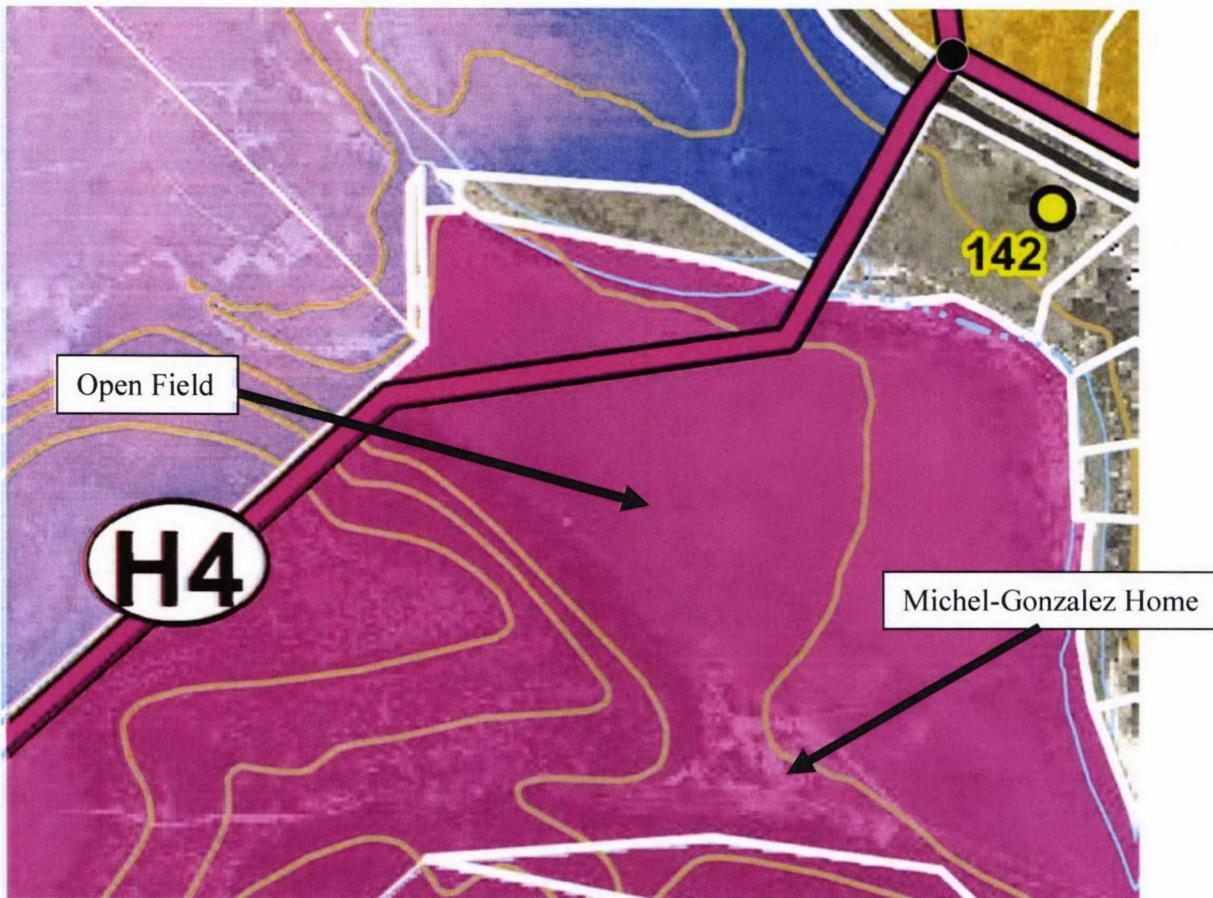
Figure 6: View From Michel-Gonzalez House Toward Location of Proposed Link H4⁷¹



The relationship between Mr. Michel-Gonzalez's house and the proposed path of Segment H4 is clear on the aerial maps provided by LCRA TSC:

⁷¹ Id.

Figure 7: Aerial Image of Segment H4 in Relation to Michel-Gonzalez Residence⁷²



There is no reason to impose this burden on Mr. Michel-Gonzalez's property when Routes Hunt 5A and Hunt 37A outperform Route Hunt 7A under the Commission's routing criteria. As discussed in prior briefing, Mr. Michel-Gonzalez is not attempting to avoid the line altogether. In fact, he has indicated a willingness to accept the ROW for Segments C or C5 on his property. At 1.95 miles long,⁷³ the ROW for Segment C5 is nearly as long as the combined impact of Segments I and H4. However, unlike Segments I and H4, Segments C and C5 cross Mr. Michel-Gonzalez's ranch in a reasonable way. The Commission should select one of those reasonable paths in order

⁷² LCRA TSC Ex. 2 (Large Intervenor Map).

⁷³ See Michel-Gonzalez Ex. 3 (LCRA's Response to Mr. Michel-Gonzalez's 1st Request for Information at Attachment Michel-Gonzalez 1-1, page 1 of 2).

to satisfy its duty to route this line “to the extent reasonable to moderate the impact on the affected community and landowners.”⁷⁴

3. The impact of Routes Hunt 5A or 37A on Creek House and Vorpal does not justify selecting Route Hunt 7A.

Creek House and Vorpal failed to demonstrate that Segment Z3 (on Routes Hunt 5A or 37A) would impact their properties as severely as Segments I and H4 (on Route Hunt 7A) would impact Mr. Michel-Gonzalez. As explained above, the ROW for Segments I and H4 deviate from Mr. Michel-Gonzalez’s property lines for approximately *1.6 miles*. In contrast, the record shows that only a short distance (approximately 0.28 miles⁷⁵) of Segment Z3 would leave Vorpal’s property boundary as the line crosses Johnson Creek.⁷⁶ And while it is true that Segment Z3 passes within 300 feet of two habitable structures on the Creek House property, the actual ROW would not fall on the tracts where those structures are located.⁷⁷ In other words, Routes Hunt 5A and 37A more equitably divide the burden of this line between various landowners: some, including Mr. Michel-Gonzalez,⁷⁸ will have land taken and cleared for ROW, while others would have habitable structures close to the line. This distribution of the burden is in stark contrast to Route Hunt 7A, which avoids Creek House and Vorpal on Segment Z3, but places an even greater portion of the ROW on Mr. Michel-Gonzalez’s property by crossing it on both Segment I *and* Segment H4, and would also require bisecting *pro se* intervenor Ms. Short’s property on Segment I4. Simply put, the Commission should not allow Creek House and Vorpal to shift the burden of this line onto their neighbors, especially when their preferred route performs worse than either Routes Hunt 5A or 37A under the Commission’s traditional routing criteria.

⁷⁴ 16 TAC § 25.101(b)(3)(B).

⁷⁵ LCRA TSC Errata, Attachment 4 (Segment Z3 is 0.84 miles long and parallels property boundaries for 67% of its length, meaning that 0.28 miles do not parallel property boundaries.).

⁷⁶ LCRA TSC Ex. 2 (Large Intervenor Map).

⁷⁷ LCRA TSC Ex. 2 (Large Intervenor Map).

⁷⁸ Mr. Michel-Gonzalez has offered to accept the northern portion of Segment C on his property if the Commission selects Route Hunt 5A.

VI. CONCLUSION

Route Hunt 5A best satisfies the Commission's routing criteria—it is the shortest, most direct, least expensive route, and is within 300 feet of the fewest habitable structures of any route that is still in contention. Route Hunt 5A also performs better than any route that uses Segment I in paralleling property boundaries and compatible ROW. Accordingly, Mr. Michel-Gonzalez supports Route Hunt 5A, even though it would follow his entire western property boundary, and he is even willing to take the ROW on his property (rather than his neighbor's) if the Commission selects a route that includes Segment C.

If the Commission does not adopt Route Hunt 5A, it should select the PFD's recommended Route Hunt 37A, which follows Mr. Michel-Gonzalez's southern and western property boundaries along Segment C5 instead of cutting his ranch in half along Segment I. While Mr. Michel-Gonzalez does not prefer Segment C5, as it would border his ranch on two sides, he has consented to that Segment because it is a better and less harmful alternative to Segment I.

Respectfully submitted,

/s/ Michael McMillin _____

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CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for Mr. Michel-Gonzalez, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 15th day of May, 2020 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ Michael McMillin
Michael McMillin