

CLEAR VIEW ALLIANCE, INC.
NOVEMBER 15, 2010

SOAH DOCKET NO. 473-10-5546
PUC DOCKET NO. 38354

APPLICATION OF LCRA §
TRANSMISSION SERVICES §
CORPORATION TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § BEFORE THE STATE OFFICE
AND NECESSITY FOR THE §
PROPOSED McCAMEY D TO § OF
KENDALL TO GILLESPIE 345-Kv §
CREZ TRANSMISSION LINE IN § ADMINISTRATIVE HEARINGS
SCHLEICHER, SUTTON, MENARD, §
KIMBLE, MASON, GILLESPIE, KERR §
AND KENDALL COUNTIES §

**CLEAR VIEW ALLIANCE, INC.'S
INITIAL POST-HEARING BRIEF**

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- Attachment A: Proposed Findings of Fact and Conclusions of Law
- Attachment B: Excerpt from PUC Docket No. 37778, Pickett and Jones' Reply to
Exceptions

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Clear View Alliance, Inc. (“CVA”)¹ submits its Initial Post-Hearing Brief in accordance with the deadline and directives established by the ALJs.

Summary of Position

CVA’s position is that the Commission should not grant LCRA TSC a CCN to construct the line on the Preferred Route – MK 13 – or on any of the routes or segments that go through the heart of the Hill Country. Instead, the line should be constructed on Route MK 33. This route parallels Highway 277 south from McCamey D and then turns east at Sonora and follows Interstate 10 to the Kendall station. This route uses compatible right-of-way for more than 80% of its length and presents an extraordinary opportunity to protect the rugged beauty of the heart of the Texas Hill Country.

The comments that have been submitted since this CREZ line was first proposed, the local government resolutions that have been adopted, and the testimony that is now in the record all reveal the passion and depth of feeling among Texans for the protection of this extraordinary portion of the state. This application was delayed expressly to permit LCRA TSC to study

¹ CVA is the authorized representative of approximately 240 individual landowners who have intervened in this proceeding. A list of the intervenors who designated CVA as their authorized representative was attached to its Joint Position Statement filed on September 28, 2010.

routing options that would take the line out of the middle of the Hill Country and locate it instead along existing right-of-way. LCRA TSC's and Staff's Joint Motion to delay the filing of the CCN application for this CREZ line recognized the public's urging that an "I-10 Route" be considered. MK 33 and MK 32 are that I-10 Route.

CVA recognizes that these routes are long. CVA recognizes that the immediate capital cost of construction is higher for these routes than for the diagonal, straight-line routes that are proposed to cut through the heart of the Hill Country. But, if these routes are rejected at the outset, based on their cost, then all the parties who have devoted time, energy and resources to this case, and all the people who passionately seek a means to protect the Hill Country will have wasted their efforts. None of the routes now in serious contention (other than MK 13) is as inexpensive as the ruler-straight line envisioned in the CTO Study.

CVA has presented a full case in this proceeding. Its witnesses have demonstrated that the Route MK 33 best fulfills the criteria the Commission must consider under PURA and its Substantive Rules. The breadth and depth of CVA's case exceeds the page limits established by the ALJs for briefing and therefore CVA is submitting proposed Findings of Fact with citations to the record.

CVA's stated goal since its formation has never wavered. The proposed line should be constructed along Highway 277 and I-10 and it should be built on monopoles. The primary objective has been to minimize the negative impact on the natural and in many areas unspoiled beauty of the Hill Country, wildlife habitat, environment, land use and recreational opportunities that should be saved. When you consider the 100 to 160 foot corridor for 130 to 160 miles, its removal could seem insignificant in a state with 268,601 square miles. However, that loss is not insignificant if placed in the heart of the most unspoiled portions of the Hill Country. Once it is altered it will never be the same within our lifetimes.

Paralleling existing rights-of-way to the maximum extent possible reduces the amount of new intrusion and new disturbance. MK 33 best fulfills this objective. If the Commission declines to approve this route, CVA's position is that MK 32 is the next best choice. Although CVA does not argue for MK 22 as the optimum route in this proceeding, CVA recognizes that MK22 parallels a significant amount of compatible right-of-way, because it parallels an existing 138 kV transmission line and would satisfy the Commission's previously stated preference for routes that utilize compatible right-of-way. The fourth option, Staff's Modified Route MK 15

also parallels considerable existing right-of-way along Interstate 10 and CVA recognizes Staff's effort to avoid the heart of the Hill Country.

As CVA witness Wyman Meinzer, the Texas State Photographer, testified, "[t]he Hill Country's beauty is both subtle and expansive. Its vistas of rolling limestone hills, fields of wildflowers, cold spring-fed streams and cypress-shaded rivers create landscapes that take your breath away. For miles and miles you can see unique juxtapositions of natural beauty: prickly cactus with dustings of snow, slow-moving streams sliding over craggy rocks, brightly colored wildflowers growing among granite boulders and barb-wire fences bounding acres of feathery tall grass or a sea of bluebonnets."²

I. Route MK 33 best fulfills the requirements established in PURA, the Commission's rules and the Commission's orders.

Route MK 33 is the best alternative when examined using the factors set forth in PURA 37.056(c)(4)—excluding (4)(E)—and as set forth in P.U.C. SUBST. R. 25.101(b)(3)(B). There is very little compatible right-of-way along the other routes LCRA TSC has proposed other than the northern routes, such as MK 22, that parallel an existing 138 kV transmission line for much of their length. Although the central routes are less expensive to build, placing a transmission line on any of them will have a significant, adverse impact on an area that otherwise has been touched lightly by man-made infrastructure.

LCRA TSC selected as its Preferred Route a route that has two metrics strongly in its favor: a low number of habitable structures and relatively short distance. Route MK 13 also costs less than many other routes. If the only requirements in selecting a route for a transmission line were to submit a handful of routes consisting of straight lines that affect few habitable structures and have a low cost, then there would be no need for a utility to submit a robust number of options from which the Commission could make its decision. In particular, there would have been no reason to delay the filing of this Application so that less intrusive options that use more compatible right-of-way could be evaluated and the strongly held community values that desire protection and preservation of the Hill Country could be heard.

CVA witness Dr. Neal Wilkins testified extensively about the effects of the proposed transmission line on land fragmentation. Land fragmentation, and its consequence, is one of the

² CVA Ex. 5 at 4.

greatest statewide challenges to wildlife management and conservation in Texas. In 2000, a report from the Governor’s Task Force on Conservation concluded that “The fragmentation of . . . family owned farms and ranches poses perhaps the greatest single threat to our wildlife habitat and to the long-term viability of agriculture in Texas.” Dr. Wilkins testified that a transmission line project that stimulates land fragmentation will have an impact on wildlife habitat and on other agricultural uses of the land.³

Dr. Wilkins testified that development of a new corridor – especially one that is strikingly in contrast with the surrounding landscape – is likely to stimulate current landowners to sell land. In addition, landowners have come to realize that the construction of one right-of-way creates an opportunity for that area to be considered a compatible corridor, thus resulting in cumulative effects of widened right-of-ways and additional construction for future pipelines and/or transmission lines.⁴

Dr. Wilkins has documented land fragmentation trends throughout Texas for over a decade and testified that recent activities put important focus on the fragmentation trend. When considering profitability, size really matters – statewide figures demonstrate that profitability is closely related to the economy-of-scale achieved with larger operations. Land fragmentation results in smaller operations – and this especially influences the economies-of-scale for wildlife management and animal agriculture.⁵ Dividing a large tract into smaller parcels causes a series of changes that are often negative from the standpoint of wildlife management, natural resource conservation, and agricultural production.⁶

After leaving the McCamey D station, all but one of the proposed series of links cross Schleicher County (and parts of adjacent Sutton County) through native mixed grasslands and live-oak savannas that once characterized much of the native rangelands throughout the Edwards Plateau. The ranchland traversed by any of the Links b14a-c, b84, b86, b11-b16, and P1 would likely be impacted in such a way that current land uses and natural resource values would be damaged.⁷

The native rangelands area of Schleicher County is one of the few areas in the Edwards Plateau that has countered the recent trend toward fragmentation of large ownerships, with over

³ Clear View Ex. 1 at 10.

⁴ *Id.* at 10-11.

⁵ *Id.* at 11.

⁶ *Id.*

⁷ *Id.* at 12.

88% of its lands being managed as part of large areas of native rangeland. While the overall recent trend toward loss of large ownerships has held in adjacent Menard and Kimble Counties, the areas traversed by many of the alternative routes – particularly those west of Highway 83 – remain relatively unfragmented.

There are many areas in the Study Area where land fragmentation would be a concern, but Dr. Wilkins identified some examples in his direct testimony:⁸

- The Preferred Route and all of the links contributing to the central routes cut through the middle section of the lands managed by the Doss-Harper Wildlife Management Association (WMA). These privately-managed lands include properties that have been managed for generations under the same ownership. These landowners manage their wildlife resources in a cooperative that helps them overcome some of the inefficiencies common to land fragmentation. Especially along Links b36, b50, b51, and b42-47, the preferred route would run through the center of the Doss-Harper WMA for approximately 12 miles.
- The Bear Creek drainage of northwest Kimble County would be threatened by any route that included Links b86a, b19ab, b21a, and b18-b20. The Bear Creek Valley includes large ranches and homesteads that were settled in the 1860s to 1890s. While the fact that many of the existing homes and historic sites have been restored and maintained makes the area unique, it is actually the spring-fed perennial waters of Bear Creek and its tributaries that are one of the greatest natural resource values.
- Links b34 and b36 of the preferred route (MK13) cross through the headwaters of the James River basin. The route approaches the Little Devil's River across unfragmented grasslands and oak-juniper woodlands. As the route crosses the Little Devil's and James River, it comes in close proximity to the Eckert James River Bat Cave Preserve, with one of the largest known concentrations of breeding Mexican free-tailed bats anywhere.

⁸ *Id.* at 12-14.

The U.S. Highway 277 and IH-10 corridors already have altered the landscape through the Hill Country. MK 33 and, to a somewhat lesser extent MK 32, leave the heart of the Hill Country intact. The interior portions of the study area are inappropriate locations for the new line.

- LCRA TSC's EA and its Route Analysis were based on a set of faulty assumptions regarding the primary land use for much of the area considered for its alternative routes. The analysis largely ignored the very real impacts of land fragmentation and loss of habitat function on land use and public benefit. (Findings of Fact on environmental issues)
- For its impact assessment on endangered golden-cheeked warblers, LCRA and its consultants largely relied on a single metric – i.e., cumulative distance of potential habitat encountered – as a proxy for estimating impact. Because of the ranking emerging from the use of this faulty metric for warbler impact, the preferred route was in fact actually ranked in LCRA TSC's EA as the most desirable from an ecological perspective. This conclusion was without merit. (Findings of Fact on environmental impact and endangered species)
- The Environmental Assessment did not fully consider the likely damage and ecological risks to high-value riparian habitats, as well as the risks to soil and water resources due to the topographic relief. If the above constraints would have been properly considered in the EA, it seems likely that essentially all of the routes in the central portion of the study area would have been either re-ranked and/or eliminated from final consideration as a preferred route. (Findings of Fact on environmental impact and endangered species)
- Transmission lines through the interior components of the study area would have a detrimental effect on the vast viewsheds that are a characteristic of the Hill Country and they would negatively impact the economic and natural capacity of the land through visual degradation. (Findings of Fact on aesthetic values)

- Constructing the line outside of the already disturbed area along Interstate 35 where oak wilt already has spread, creates an unacceptable level of risk of spreading this devastating disease to the interior of the Hill Country. Treatment for oak wilt is very expensive and there is no assurance of success. Replanting is unlikely to be successful. (Findings of Fact on oak wilt)
- Selection of a short direct route could be the most costly option in the long-term. The land is worth far more for what it looks like, its physical appearance, its aesthetics, its natural resources, and recreational attractiveness, than for what it can produce. It is hard to place value on the vistas that may be lost, but those vistas are worth far more in the long run, and perhaps even in one year, than the full cost of this project. The documented revenue from tourism in the eight counties was over \$255 million in 2009 alone. The value of tourism generated in two years in these eight counties would be greater than the most expensive route proposed. This revenue source for the region and the state should not be jeopardized. (Findings of Fact on tourism)
- Selecting Route MK 33 or MK 32 for the line comports with the Commission's policy of prudent avoidance. All of LCRA TSC's proposed routes are consistent with this policy. Although these two routes have the greatest number of habitable structures within 500 feet of the centerline, there is less than one habitable structure per mile in proximity to the line and this is consistent with prior Commission routing decisions. (Findings of Fact on prudent avoidance)

II. No aviation safety concern, no reliability concern and no erosion concern requires that the transmission line be buried at Segment Y11.

The credible evidence in the record proves that LCRA TSC can construct the transmission line above ground on Link Y11 south of the Kimble County Airport.⁹ What the hearing revealed as well, however, is that it does not want to do so¹⁰ and it has focused its case

⁹ Clear View recognizes there are two separate issues associated with the Kimble County Airport: construction on Link Y11 that may affect the southern approach to the airport on Runway 35 and construction on Link b19c that may affect the northern approach on Runway 17. This brief focuses on the Runway 35 approach and the reasons supporting construction of the transmission line on Route MK33, including Link Y11.

¹⁰ Tr. at 1466.

on stating the reasons why it made the decision to bury the line.¹¹ LCRA TSC's position is untenable. It is based on an erroneous analysis of the Federal Aviation Administration's ("FAA") rules, misstated and overstated concerns about reliability, and a false assumption as to its obligations to wind generators.

If the Commission accepts LCRA TSC's flawed analysis, Route MK 33 almost certainly is cost prohibitive. CVA agrees that an expenditure of \$54 million to bury a portion of the line would not be a wise investment of ratepayers' funds. Fortunately, that expenditure is unnecessary and the line can be built above ground.

The reasons LCRA TSC states for not wanting to build the transmission line above ground are: possible danger to air navigation; flood events and reliability concerns associated with lower height transmission structures; and erosion.¹² Three of the four reasons LCRA TSC cites to justify its recommendation of underground construction are related to the height of the structures, so the proper analysis of and understanding of the FAA's rules is critical to a determination of how to construct the line on Segment Y11. Structures in proximity to an airport runway that are too tall will be objected to by the FAA. At the same time, because of the Airport's location near the North Llano River, the supporting structures will be in a flood plain. If the height of the structures is reduced below a certain level, the conductors could be located at a height that causes reliability concerns if a flood event were to occur.¹³ So long as the structures are sufficiently tall, however, the height of the conductors above the water in a flood event will be high enough to eliminate any reliability concern. If the structure height issue is resolved, then LCRA TSC's concerns reliability should be eliminated¹⁴ and the distances between the transmission lines and the flood plain would be increased to a point that they should no longer be a problem.

Possible Danger to Air Navigation

When a transmission line is to be constructed in proximity to a public airport, the FAA performs an aeronautical study to review potential impacts of the proposed construction on

¹¹ LCRA TSC Ex. 7 at 35-36; LCRA TSC Ex. 14 at 35-38; LCRA TSC Ex. 15. LCRA TSC also stated that any one of those reasons, by itself, would not prevent above-ground construction. LCRA TSC Ex. 14 at 38.

¹² LCRA TSC Ex. 14 at 37-38.

¹³ LCRA TSC Ex. 7 at 35.

¹⁴ Tr. at 1305.

navigable airspace.¹⁵ The FAA’s applicable regulations are contained in Federal Aviation Regulation (“FAR”) 14 CFR part 77, commonly referred to as Part 77. Part 77 sets forth its notice requirements for proposed construction or alteration of projects, such as transmission lines, and provides standards for determining whether such projects will create obstructions to navigable airspace.¹⁶ After the aeronautical study is completed, the FAA regional office normally will issue either a “No Objection,” “Conditional No Objection,” or an “Objection” to the proposed project.¹⁷

Clear View witness Frank McIllwain, P.E. is an engineer with 12 years of airport design experience; he also is a pilot. Mr. McIllwain’s direct testimony includes an exhibit that depicts the Runway 35 approach and shows the results of his calculations based on the FAA’s regulations.¹⁸ The exhibit indicates how tall the structure could be without being determined to be an obstruction.¹⁹ Mr. McIllwain testified that it is his opinion that the FAA will not object to construction of the transmission line on Link Y11 if the heights of the structures do not exceed 61 feet.²⁰

Mr. McIllwain testified that the FAA applies a 20:1 slope requirement to the Approach Surface when it evaluates whether it will issue an objection for a project that may affect a visual approach (as with the existing Runway 35 approach at Kimble County Airport).²¹ A 20:1 approach slope means that when a plane is taking off, for example, within a distance of 200 feet, the pilot should expect to climb 10 feet; in a distance of 2,000 feet, a pilot should expect to climb 100 feet.

LCRA TSC’s expert witness, William Griffin, P.E. acknowledged on cross examination that a structure 60 feet tall would not be determined by the FAA to be an obstruction to air

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 5. The FAA applies FAR 14 CFR § 77.25 for its evaluation associated with construction projects that affect civil airports.

¹⁸ *Id.* at 19 (Attachment FOM-3).

¹⁹ *Id.* at 7.

²⁰ *Id.* at 6.

²¹ *Id.* at 5-6. The FAA establishes “imaginary surfaces” that it uses to identify or determine whether obstructions to air space exist or would exist if built around airports. The Approach Surface is longitudinally centered on the extended centerline of the runway, beginning at the end of the Primary Surface. The Primary Surface is aligned with the runway and extends 200 feet beyond each end of the runway. Thus, the Approach Surface begins 200 feet from the end of the runway at a width of 500 feet and it flares (like a cone) to 1,000 feet at a distance of 5,000 feet from the end of the Primary Surface. The surface slope for a visual approach is 20:1; the surface slope for a non-precision instrument approach is 34:1. The existing approach for Runway 35 is a visual 20:1 approach.

navigation.²² Mr. Griffin, however, said in his prefiled rebuttal testimony that he believes the FAA will object to the construction in the configuration that Mr. McIllwain concluded is acceptable, because it would violate what Mr. Griffin referred to as an “Obstacle Clearance Slope.”²³ Mr. Griffin emphasized the Obstacle Clearance Slope and recommended not building a structure that required a change in the Obstacle Clearance Slope.²⁴ The Obstacle Clearance Slope that Mr. Griffin applied, however, is a flatter 34:1 obstruction clearance slope, not the 20:1 standard Mr. McIllwain identified as what the FAA would use to determine whether it objects to construction of the transmission line.

When questioned on this at the hearing, Mr. Griffin was unable to substantiate his statements. When asked if he based his belief on any FAA rule, Mr. Griffin stated: “And as far as I know, the FAA doesn’t publish rules — or all of the rules associated with their OE in-houses (sic).”²⁵ Upon further cross-examination, Mr. Griffin acknowledged that the FAA does have a 350-page handbook for its obstruction evaluations.²⁶ He did not identify any rule, order, or precedent that was the basis for his belief that the FAA will object to construction of the proposed transmission line as Mr. McIllwain proposes. To be clear, Mr. McIllwain’s proposed construction height for the transmission line supporting structure is higher than the existing obstruction clearance slope at the Airport, but it is *below* what is required by the FAA Part 77 Approach Slope Surface. In other words, there is “head room” in Part 77 to erect a structure near the Airport that is taller than structures or natural obstacles (such as trees) that exist there now. The existing obstruction clearance slope upon which Mr. Griffin relies for his belief that the FAA will object to the proposed construction is not listed in the list of surfaces considered by the FAA in FAR 14 CFR § 77.25.

The record thus establishes that LCRA TSC may construct, without an FAA objection, transmission line structures that are up to 60 feet tall in the area that is within the aircraft approach surface.

²² Tr. at 1303. Mr. Griffin repeated this assertion in his redirect testimony at the hearing but again did not provide justification for his belief. Tr. at 1462.

²³ LCRA TSC Ex. 15, Griffin Rebuttal at 10 and 12. Mr. Griffin acknowledged that he used the term “Obstacle Clearance Slope” in his testimony instead of the precise definition “obstruction clearance slope.” Tr. at 1293.

²⁴ LCRA TSC Ex. 15 at 12. Mr. Griffin stated that he believed the FAA is “very likely to object to the construction of Link Y11 in the configuration Mr. McIllwain describes.”

²⁵ Tr. at 1300.

²⁶ *Id.*

What LCRA TSC mistakenly concluded is that a flatter approach slope and a different obstruction standard apply to the Airport instead of the 20:1 visual runway Approach Surface standard established in FAA Part 77. As a result, LCRA TSC restricted its structure heights to under 60 feet, thereby creating a potential reliability concern.

LCRA TSC's Concerns about Reliability

Because LCRA TSC limited itself to building transmission structures that are lower than what will be permitted by the FAA,²⁷ the lower height structures became the cause of LCRA TSC's flood and reliability concerns. Specifically, the use of lower height structures means that the conductors will be closer to the ground than if the supporting structures are the standard 120 to 180 foot towers. LCRA TSC anticipated that the lower height lines would have to be fenced with security fences.²⁸ The Airport is located near the North Llano River and the route LCRA TSC selected for the transmission line in this location includes Segment Y11 which crosses a 100-year flood plain. The National Electrical Safety Code and LCRA TSC's safety standards require that a minimum separation of 26 feet be maintained between conductors and any ground or water surface.²⁹ In the event of a flood, rising water would make the gap between the conductors and the water level smaller. Floodwaters also could damage the security fences.³⁰

LCRA TSC did not raise concerns about cascading outages, but expressed concerns that the McCamey D to Kendall circuits will be required to be removed from operation. It also said that reenergizing the circuits could be delayed if the security fences are damaged. LCRA TSC witness Mr. Garza acknowledged that ERCOT will have the appropriate measures in place to address the new issues being introduced into the grid by the full CREZ environment and continue to operate the grid in a safe, reliable and prudent manner as long as the TSCs provide them with reliable facilities. He did not raise concerns about power outages at the hearing; rather, LCRA TSC's main concern appeared to be that the wind generators would be curtailed during the time the line was out of operation.³¹

²⁷ LCRA TSC investigated a 2,500 foot section using low-profile structures with a minimum ground clearance of 18 feet. The estimated cost for that option was \$3,168,000. Clear View Ex. 38, LCRA TSC Response to CVA RFI 6-22 at 2.

²⁸ LCRA TSC Ex. 7 at 35.

²⁹ Clear View Ex. 24 at 20.

³⁰ Tr. at 1209.

³¹ Tr. at 891-894.

Saba Ranch expert witness Mr. Dauphinais testified that, if there were no structural damage to the supporting structures of the transmission line, restoration of service could be accomplished relatively quickly after a flood event.³² Questioned further by LCRA TSC, Mr. Dauphinais testified that “we’re talking about an event that is not going to occur very frequently, and it may not – may not damage the secured area when it occurs.”³³ Mr. Dauphinais also testified that the power would be distributed on the transmission system in a controlled fashion.³⁴

Planning for weather events that may affect transmission line reliability is not unusual in Texas. Mr. Dauphinais testified that: “It is not unusual to have some lines that may have special operating procedures associated with them.”³⁵ Mr. Dauphinais further testified that LCRA TSC could take the McCamey D to Kendall circuits out of operation at a time of concern³⁶ and that this could be done in advance of an anticipated flooding event that has the potential to create a safety or reliability concern.³⁷ A process to take a transmission line out of operation is not different than other types of reliability events we experience in Texas.³⁸

If a flooding event were to require that the line be taken out of operation, the potential consequence identified by Mr. Dauphinais is that “[i]t might reduce transfer capability during the period of time that it is out of operation.”³⁹ This would have an effect on the ability to accept wind power on the ERCOT grid during the period of the outage.⁴⁰ Mr. Dauphinais, however, stated that he would expect “the economic impact of the reduction of transfer capability to be substantially less than the additional cost incurred to put the line underground.”⁴¹

On cross-examination by LCRA TSC on this issue, Mr. Dauphinais disagreed that the purposes of CREZ would be compromised by this situation, stating that the purposes of CREZ

32 Tr. at 889.

33 Tr. at 891.

34 Tr. at 891-892.

35 Tr. at 886.

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

40 Tr. at 886-887.

41 Tr. at 887.

would only be limited for a number of hours or days.⁴² Mr. Dauphinais further testified that the power would be distributed on the transmission system in a controlled manner.⁴³

Based on the record evidence, it is CVA's position that the concerns LCRA TSC has raised regarding reliability are misplaced and overstated. If LCRA TSC were in fact required to build the line using structures shorter than 60 feet, LCRA TSC is at most faced with the prospect of shutting down the line for a relatively brief period of time during a flood event. LCRA TSC has not contended that ERCOT cannot safely and reliably operate the transmission grid in the event the line is out of operation for a time. Clear View is confident that LCRA TSC will be able to carry out its responsibilities to operate the line safely and LCRA TSC has not said otherwise.

What CVA considers incredible is LCRA TSC's decision that burying the line at a cost of \$54,000,000 is an appropriate means of ensuring that a flood at this location will not cause any curtailment of CREZ generating capacity. CVA cannot in conscience ask the Commission to approve and the ratepayers to pay for a half-mile of buried cables in this location when a tornado or an ice storm is equally capable of causing an outage in this or any other CREZ 345 kV line. CVA is aware of no guarantees to any wind generator made by the Public Utility Commission of Texas that there will be a continuous and maximum capacity operating CREZ system for the next 100 years. CVA believes that no individual generator is entitled to any specific level of production or a system topology.

If, due to infrequent flood events, the McCamey D to Kendall circuits are out of operation for a matter of hours or even days, CVA is confident that ERCOT will manage the grid so that power is reliably delivered to Texas customers. An investment of \$54 million to assuage LCRA TSC's concerns for wind generation is not warranted or cost-effective. LCRA TSC can construct the transmission line above ground on Segment Y11 so that power is transferred on a reliable and consistent basis without charging Texas ratepayers for its proposed underground facilities.

Erosion

LCRA TSC did raise a concern that is not related to the height of the transmission structures: erosion in the flood plain crossed by Link Y11. Yet, LCRA TSC apparently ignored

⁴² Tr. at 891.

⁴³ *Id.*

the use of cost-effective options that would allow it to construct Link Y11 without erosion concerns. Instead, LCRA TSC raises the unsupported specter of erosion even affecting Interstate 10.

Clear View witness Russell Gully, P.E., R.P.L.S. is a Professional Engineer, Registered Professional Land Surveyor and the owner of SKG Engineering. Mr. Gully performed an in-person examination of the area of the North Llano River where Segment Y11 would be constructed and did not observe active erosion of the river bank in this area.⁴⁴ Mr. Gully testified that in his expert opinion there are few, if any, erosion concerns associated with the area south of the Kimble County Airport and that those concerns can be addressed in an efficient and economic manner.⁴⁵

Mr. Gully testified that the right-of-way will be in the floodplain, not in the floodway, and discussed large, old oak trees that are located north of the river.⁴⁶ He also testified that an oak tree is similar to the concrete post of a power line. It is effectively the same scenario, except the tree would be closer to the river.⁴⁷ Mr. Gully testified that there is not active erosion where the trees are located, so he would not expect there to be erosion problems with the transmission lines.⁴⁸

Mr. Gully's rebuttal testimony included 5 aerial photographs showing the location in question, dating back to 1939.⁴⁹ Contrary to LCRA TSC's claims, these photographs show that the river bank does not appear to be eroding or endangering the interstate or the area where the transmission line would be located. What Mr. Gully's testimony makes clear is that LCRA TSC's erosion concerns are not supported by any evidence, and LCRA TSC has undertaken no effort to determine what solutions are available, solutions that Mr. Gully testifies exist and can address LCRA TSC's concerns in an efficient and economic manner. LCRA TSC's parent company is a well-regarded custodian of many of the rivers and lakes in central Texas. Clear View is confident that LCRA TSC can address any erosion concerns that arise during construction and operation of the transmission line on Link Y11.

⁴⁴ Clear View Ex. 18, Gully Cross-Rebuttal at 5. Mr. Gully testified that there were no areas where there are gullies or ravines from overland flow eroding the bank. The floodway is fairly wide and deep in the area.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 8. The oak trees have a 2 foot diameter base and have vegetation and grasses growing around them.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 8.

⁴⁹ *Id.* 21-25.

In conclusion, LCRA TSC has failed to demonstrate that it has accurately analyzed the construction options for an above ground transmission line at Segment Y11 near the Kimble County Airport. It has misapplied the FAA's obstruction standards, resulting in a conclusion that the structure height must be lower than actually allowable by FAA rule. It then determined that the low structures would require security fences and would result in a conductor height that in a flood event would require it to take the line out of operation for hours or days. And, it concluded that the purposes of the CREZ transmission lines require it to ensure that this portion of the line never be taken out of operation. The upshot of this erroneous chain of conclusions was a proposal to build the line underground at a cost of \$54,000,000.

III. Monopoles should be approved for this project

CVA's position is that, wherever the line is built, it should be built using monopoles and not steel lattice towers. Monopoles have a smaller footprint and, as a result, occupy less land. They also are not as ugly and industrial to look at, an important consideration given that the supporting structures and the line will be a permanent fixture on the land. LCRA TSC has said that it will build the line with monopoles to the extent it is physically possible if the Commission orders it to do so.⁵⁰ The Commission should issue that order.

Steel and spun concrete monopole structures are both proven technologies in the United States. When compared to other structures, the speed and ease of installation of monopoles is significantly better, the impact on land is less, and the economic decisions associated with easier installations and little post-installation maintenance result in low life-cycle costs. The use of monopole structures also allows much more flexibility with respect to width of right-of-way and height requirements for structures. Monopole structures are used successfully throughout the country, including the Horse Hollow NextEra line in the Hill Country. The use of monopole structures in this project is feasible, cost competitive in many instances and cost effective over the long run. (Findings of Fact on monopoles)

⁵⁰ LCRA TSC Ex. 7, Direct Testimony of LCRA TSC witness Curtis Symank at 13.

Respectfully submitted,

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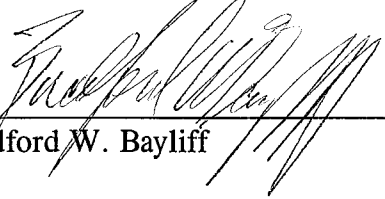
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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2010, a copy of Clear View Alliance, Inc.'s Initial Post-Hearing Brief was served in accordance with SOAH Order Nos. 1 and 2.



Bradford W. Bayliff