

**CAUSE NO. D-1-GV-11-000324**

**CITY OF KERRVILLE, KERRVILLE  
PUBLIC UTILITY BOARD, AND CITY  
OF JUNCTION**

**Plaintiffs,**

**vs.**

**PUBLIC UTILITY COMMISSION OF  
TEXAS**

**Defendant.**

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§

**IN THE DISTRICT COURT OF**

**TRAVIS COUNTY, TEXAS**

**98th JUDICIAL DISTRICT**

**PLAINTIFFS' AND INTERVENOR KERR COUNTY'S  
JOINT BRIEF ON THE MERITS**

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**MAY 17, 2011**

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Attachment F – Excerpt of PUC Open Meeting Transcript (Jan. 20, 2011)

Attachment G – Community Values Chart

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CITY OF KERRVILLE, KERRVILLE	§	IN THE DISTRICT COURT OF
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Plaintiffs,	§	
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vs.	§	TRAVIS COUNTY, TEXAS
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PUBLIC UTILITY COMMISSION OF	§	
TEXAS	§	
Defendant.	§	98th JUDICIAL DISTRICT

**PLAINTIFFS' AND INTERVENOR KERR COUNTY'S  
JOINT BRIEF ON THE MERITS**

**TO THE HONORABLE JUDGE LIVINGSTON:**

COME NOW, the City of Kerrville, Kerrville Public Utility Board, and the City of Junction ("Kerrville, *et al.*" or "Plaintiffs"), and Kerr County, Intervenor, referred to jointly with Plaintiffs, and file this joint initial brief in support of Plaintiffs' Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief, seeking judicial review of the Final Order of the Public Utility Commission of Texas ("PUC" or "Commission") entered in *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for the Proposed McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr and Kendall Counties, Texas*, PUC Docket No. 38354. Plaintiffs would respectfully show the following:

**STATEMENT OF THE NATURE OF THE CASE**

This suit is an appeal from the January 24, 2011 Final Order of the Public Utility Commission of Texas in PUC Docket No. 38354 and is filed pursuant to §§ 2001.171 and

2001.176 of the Texas Government Code<sup>1</sup> and §§ 15.001 and 33.026 of the Public Utility Regulatory Act (“PURA”).<sup>2</sup>

### STATEMENT OF FACTS

The administrative proceeding in PUC Docket No. 38354 concerned one overarching issue: the proper route for construction of a 345 kilovolt (“kV”) transmission line through the Texas Hill Country. The Lower Colorado River Authority Transmission Services Corporation (“LCRA TSC”) filed an application (“Application”) to amend its certificate of convenience and necessity (“CCN”) on July 28, 2010. LCRA TSC’s Application sought authority from the Commission to construct a transmission line to transport electricity from LCRA TSC’s McCamey D substation, located in Schleicher County, north of Eldorado, to LCRA TSC’s Kendall substation, located in Kendall County, near Comfort.<sup>3</sup>

Transmission line routes are constructed from a series of smaller links or segments to connect two substations. LCRA TSC proposed many different combinations of links in its Application to form a total of 60 potential routes for the McCamey D to Kendall transmission line.<sup>4</sup> The length of the proposed routes varied between 128 and 166 miles.<sup>5</sup> The proposed routes were all to be located within the “study area,” consisting of an area inside Schleicher,

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<sup>1</sup> Tex. Gov’t Code Ann. §§ 2001.171 and 2001.176 (West 2008 & Supp. 2010).

<sup>2</sup> Tex. Util. Code Ann. §§ 15.001 and 33.026 (West 2007 & Supp. 2010) (PURA).

<sup>3</sup> Application, LCRA TSC Ex. 1 at 11, Admin. R. Binders 16-22. Plaintiffs would note that LCRA TSC originally proposed construction of not one, but two transmission lines: the McCamey D to Kendall line, as well as the Kendall to Gillespie line. The Commission ultimately removed the proposed Kendall to Gillespie line from the project, on the basis that the need for that particular line could be met through infrastructure upgrades to the existing lines connecting the Kendall to Gillespie substations. Order on Certified Issue, (recognizing new PUC Docket No. 38577, which would ultimately remove the Kendall to Gillespie line from the project at issue in this proceeding), Admin. R. Binder 6, Item No. 297.

<sup>4</sup> Application, LCRA TSC Ex. 1 at 14, Admin. R. Binders 16-22. The record contains a list of all the links forming the sixty filed routes. Application, LCRA TSC Ex. 1 at Attachment 6 at 4 through 65, Admin. R. Binders 16-22.

<sup>5</sup> Application, LCRA TSC Ex. 1 at 9, Admin. R. Binders 16-22.

Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties.<sup>6</sup> Of its 60 filed routes, LCRA TSC designated Route MK 13 as LCRA TSC's "preferred" route for construction of the McCamey D to Kendall transmission line.<sup>7</sup> The designation of a route as a "preferred" route represents LCRA TSC's determination that the preferred route best met the routing criteria contained within the statutes and regulations governing the route selection process.

The proposed routes filed in LCRA TSC's Application in PUC Docket No. 38354 may be grouped into three general categories according to their geographic locations. The first category includes routes concentrated in the northern portion of the study area, generally referred to as the P-Line routes (named after links that begin with the letter P), which would be constructed near (but not through) the cities of Menard and Mason, following an existing 138 kV transmission line.<sup>8</sup>

The second and largest category of LCRA TSC's filed routes, including LCRA TSC's preferred route MK 13,<sup>9</sup> would be constructed through the center of the study area.<sup>10</sup> These routes would not be constructed near or through cities or highly developed areas. Instead, these routes would be constructed largely on undeveloped land. The routes in this second category are generally much more direct and therefore are shorter than the other two categories of routes. They also generally pass nearer to fewer habitable structures (homes and other buildings suitable for human habitation) than other routes.

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<sup>6</sup> Application, LCRA TSC Ex. 1 at 11-12, Admin. R. Binders 16-22.

<sup>7</sup> Direct Testimony of Rob R. Reid, LCRA TSC Ex. 9 at 23, Admin. R. Binder 28. "Preferred route" is a term of art in PUC proceedings that indicates which route the applicant utility believes best meets the statutory and rule criteria applicable to transmission line routing.

<sup>8</sup> Application, LCRA TSC Ex. 1 at Attachment 6 at 4 through 65, Admin. R. Binders 16-22. Such routes are MK 22, MK 23 and MK 24.

<sup>9</sup> The use of "MK" in the designation of a proposed route identifies that route as originating at the McCamey D substation and terminating at the Kendall substation.

<sup>10</sup> Application, LCRA TSC Ex. 1 at Attachment 6 at 4 through 65, Admin. R. Binders 16-22.



The third category of proposed routes are those routes that largely parallel U.S. Highway 277 and/or Interstate 10 (“I-10”) in the southern portion of the study area.<sup>11</sup> Interstate I-10 is a highly scenic highway through the Texas Hill Country<sup>12</sup> that boasts two of the best Scenic Overlooks and Rest Areas in Texas.<sup>13</sup> The cities of Junction and Kerrville are both bisected by I-10, and I-10 also spans across Kerr County. In addition, these routes would generally impact a greater number of habitable structures than the other two categories of routes.

On July 30, 2010, LCRA TSC’s Application was transferred to the State Office of Administrative Hearings (“SOAH”) for a hearing on the merits.<sup>14</sup> On August 6, 2010, the City of Kerrville, Kerr County, and Kerrville Public Utility Board intervened in the proceeding.<sup>15</sup> The City of Junction intervened in the proceeding on August 26, 2010. The City of Junction subsequently filed a Statement of Position on September 27, 2010.<sup>16</sup> The City of Kerrville, Kerr County, and Kerrville Public Utility Board submitted prefiled direct testimony on September 28, 2010.<sup>17</sup> Two SOAH Administrative Law Judges (“ALJs”) conducted a full hearing on the merits on the question of the proper route for the proposed McCamey D to Kendall transmission line. That hearing on the merits lasted from October 25, 2010 to November 2, 2010.<sup>18</sup>

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<sup>11</sup> Application, LCRA TSC Ex. 1 at Attachment 6 at 4 through 65, Admin. R. Binders 16-22. Examples of such routes are MK 32 and MK 33.

<sup>12</sup> Kerr County Ex. 1, Direct Testimony of Judge Pat Tinley, Attachments B and E, demonstrate that while there are small pockets of development near I-10, it is largely scenic in nature, Admin. R. Binder 15.

<sup>13</sup> Application (Environmental Assessment), LCRA TSC Ex. 1 § 2.11 at 2-73, Admin. R. Binders 16-22; Tr. at 246-247, Admin. R. Binder 33, Transcripts, Vol. J.

<sup>14</sup> Order of Referral and Preliminary Order, Admin. R. Binder 1, Item No. 7.

<sup>15</sup> Pursuant to agreement between the parties, Motions to Intervene were not compiled as a portion of the Administrative Record.

<sup>16</sup> Statement of Position by City of Junction, Attachment H to this Brief.

<sup>17</sup> Direct Testimonies for City of Kerrville, Kerrville Public Utility Board and Kerr County; Kerrville Ex. 1, KPUB Ex. 1, Kerr County Exs. 1 and 2, Admin. R. Binder 15.

<sup>18</sup> Hearing on the Merits (“HOM”) Transcript Volumes 1-7, Admin. R. Binder 33, Transcripts, Vols. J-Q.

During the hearing on the merits, the parties recommended a number of routes, and numerous parties also suggested additional combinations of links to create new routes that had not been filed in LCRA TSC's Application.<sup>19</sup> On November 1, 2010, the ALJs admitted an exhibit providing information on a number of these "new" routes that had not initially been filed in LCRA TSC's Application.<sup>20</sup> Among these new routes were Routes MK 61, MK 62, and MK 63.

After the conclusion of the hearing on the merits, the ALJs issued a Proposal for Decision ("PFD") on December 16, 2010.<sup>21</sup> The ALJs recommended the selection of PUC Staff's proposed route, "Route MK 15 Modified," for construction of the proposed McCamey D to Kendall transmission line.<sup>22</sup> Route MK 15 Modified avoids the cities of Junction and Kerrville, and the developed areas of Kerr County.<sup>23</sup>

The Commission considered the ALJs' PFD at two of its open meetings, held on January 13 and January 20, 2011. At those meetings, the Commission rejected the ALJs' selected route and instead selected Route MK 63 for construction of the transmission line, and then modified this route in several places. The Commission christened the resulting route "Modified Route MK 63."<sup>24</sup> Modified Route MK 63 belongs to the third category of routes; it would be located primarily through the southern portion of the study area, largely following I-10 and crossing directly through the cities of both Junction and Kerrville.

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<sup>19</sup> See generally, HOM Transcript Volumes 1-7, Admin. R. Binder 33, Transcripts, Vols. J-Q. There were over 1100 parties to the contested case hearing. Many of these parties participated in conjunction with a coalition or other type of group. Proposal for Decision ("PFD") at 4 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>20</sup> Tr. Vol. 6 at 1177, Admin. R. Binder 33, Transcripts, Vol. P; Criteria for Selected Routes (Excluding Modifications), LCRA TSC Ex. 26, Admin. R. Binder 29.

<sup>21</sup> PFD at 111 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>22</sup> PFD at 3 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>23</sup> Direct Testimony of Mohammed Ally, PUC Staff Ex. 1 at 18, Admin. R. Binder 31. For a map of Route MK 15 Modified, see Weinzierl Ranch Ex. 3, Admin. R. Binder 32.

<sup>24</sup> Order at 2 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

## POINTS OF ERROR AND ARGUMENT

The Order adopted by the Commission in PUC Docket No. 38354 contains numerous legal and procedural errors because the Order was derived from a “results driven” approach. While the ALJs recommended a route that negatively impacted only a moderate number of people, the Commission ordered a route that negatively impacts the greatest number of people of all the filed routes. The Commission was clearly motivated by a desire to route the transmission line along Interstate 10, despite the evidence in the record that demonstrated the inadvisability of doing so. As a result of the Commission’s “results driven” approach, the Order contains a number of errors. As further detailed herein, the Order is not supported by substantial evidence, is in violation of Constitutional and statutory provisions, was made through unlawful procedure, is affected by other error of law, and is arbitrary and capricious and marked by an unwarranted abuse of discretion. Accordingly, Plaintiffs and Intervenor Kerr County respectfully request this Honorable Court to reverse the Commission’s Order.

### POINT OF ERROR NO. 1

**The Commission erred in materially rerouting Link Y11 after the closing of the evidentiary record and without providing affected parties the opportunity to examine witnesses or present evidence on the impact of the rerouting.<sup>25</sup>**

- 1. No evidence in the evidentiary record as a whole supports the Commission’s decision to materially reroute Link Y11 through the City of Junction.**

There is no evidence in the record to support the Commission’s material and illegal decision to reroute a substantial portion of Modified Route MK 63. Under the Texas Administrative Procedure Act (“APA”), agency actions must be based upon the probative and reliable evidence in the record as whole.<sup>26</sup> The Commission ordered a substantial modification to

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<sup>25</sup> Order at 2-3, FOFs 110, 113, 115, 118a, 135, 159, 160 and COLs 9, 10 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455. Motion for Rehearing of the City of Kerrville, Kerr County, Kerrville Public Utility Board, and the City of Junction at 13-17 (Attachment A), Admin. R. Binder 10, Item No. 459.

<sup>26</sup> Tex. Gov’t Code Ann. § 2001.174(2)(E) (West 2008 & Supp. 2010).

Route MK 63 over two months after the close of the evidentiary record on November 2, 2010,<sup>27</sup> and based on evidence that was not presented by any party until after the close of the record. Therefore, there is no evidence in the record to support the Order.

The APA unambiguously requires that agency orders must have a basis in the evidentiary record.<sup>28</sup> Orders “not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole...” are reversible by a reviewing court.<sup>29</sup> In conducting a substantial evidence review, the court must determine whether the evidence as a whole supports the agency’s conclusion. The test is not whether the agency reached the correct conclusion, but whether some reasonable basis exists in the record to support the agency’s conclusion.<sup>30</sup> That reasonable basis is wholly lacking here.

In administrative hearings, the officer presiding over the contested case hearing controls the evidentiary record and officially closes the record at the completion of the contested case hearing. The PUC procedural rules grant to the officer presiding over the hearing a limited ability to reopen the record after it had been officially closed.<sup>31</sup> However, the presiding officer’s authority to do so expires upon the issuance of a Proposal for Decision.<sup>32</sup> Once the ALJ issues a PFD, the record is closed.

The facts of the case at hand establish that no evidence in the record supports the Order because it is based in part on facts first presented over two months after the close of the evidentiary record. The ALJs conducted a seven-day contested case hearing beginning on

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<sup>27</sup> Tr. Vol. 7 at 1489, Admin. R. Binder 33, Transcripts, Vol. Q.

<sup>28</sup> Tex. Gov’t Code Ann. § 2001.174(2)(E) (West 2008 & Supp. 2010).

<sup>29</sup> *Id.*

<sup>30</sup> *City of El Paso v. Pub. Util. Comm’n of Tex.*, 883 S.W.2d 179, 186 (Tex. 1994).

<sup>31</sup> 16 Tex. Admin. Code § 22.202(c) (1998) (Pub. Util. Comm’n of Tex., Presiding Officer); 16 Tex. Admin. Code § 22.203(b)(7) (2001) (Pub. Util. Comm’n of Tex., Order of Procedure).

<sup>32</sup> *Id.*

October 25, 2010, and ending on November 2, 2010.<sup>33</sup> During that hearing, evidence was admitted into the administrative record.<sup>34</sup> The ALJs specifically closed the record on November 2, 2010.<sup>35</sup> The ALJs issued a Proposal for Decision on December 16, 2010.<sup>36</sup>

The Commission first considered the PFD at its open meeting held on January 13, 2011. At that meeting, the Commission deliberated as to the proper solution for alleged construction and engineering constraints near the Kimble County Airport in the City of Junction, an issue which had been intensely litigated during the contested case hearing.

In its Application, LCRA TSC proposed numerous routes containing links that would impact the Kimble County Airport, and presented two alternatives for routing the transmission line around the airport. One option was to utilize the Y11 Link through the City of Junction and south of the airport.<sup>37</sup> The Commission did not consider the Y11 Link to be an attractive option because construction along this link potentially placed the transmission line in a flood plain.<sup>38</sup> The second option was to route the line to the north of the airport using Links b19b, b19c and b23a.<sup>39</sup> However, some intervenors argued that routing the transmission line north of the airport

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<sup>33</sup> Tr. Vols. 1-7, Admin. R. Binder 33, Transcripts, Vols. J-Q.

<sup>34</sup> *Id.*

<sup>35</sup> Tr. Vol. 7 at 1489, Admin. R. Binder 33, Transcripts, Vol. Q.

<sup>36</sup> PFD at 111 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>37</sup> PFD at 68 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412. A portion of one of LCRA TSC's filed Application maps illustrating the location of these links is attached to this Brief as Attachment B. Application, LCRA TSC Ex. 1, excerpt from fig. 6-1f, Admin. R. Binders 16-22.

<sup>38</sup> Direct Testimony of Curtis D. Symank, P.E., LCRA TSC Ex. 7 at 35, Admin. R. Binder 28. "Segment Y11 follows IH 10 on the north side of Junction. The segment is in the 100-year flood plain and close to the Kimble County Airport...[I]ts location on the south side of IH 10 between the TXDOT ROW and the northern bank of the Llano River does raise concerns. The Llano River is slowly eroding the north bank at that location, in the direction of IH 10 and the potential transmission line. At some point in the future the river could threaten the potential transmission line location, and possibly IH 10...."

<sup>39</sup> PFD at 66-67 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

would result in flight hazard issues due to the steep topography of the area.<sup>40</sup> The Commission discussed both options at its open meeting on January 13, 2011.

At that same open meeting, Mr. Bill Neiman of intervenor group Clear View Alliance (“CVA”) suggested a third alternative, albeit one that had not been the subject of any testimony or examination at the hearing on the merits: landowners to the south of the airport (and south of Link Y11) might be willing to accept the line on their properties (the “Neiman Modification”).<sup>41</sup> Mr. Neiman suggested this modification to Link Y11 outside of the evidentiary record.<sup>42</sup> At that open meeting, the Chairman warned the other Commissioners about hearing more concerning the Neiman Modification, stating: “I want to be careful going too far along this line, because we don’t have that in evidence.”<sup>43</sup> Despite this warning, however, the Commission continued to discuss the Neiman Modification to Link Y11 for an extensive portion of the January 13 open meeting.<sup>44</sup> The Commission took no action to determine any route for the McCamey D to Kendall transmission line during its January 13 open meeting and informed the parties it would make a decision at its next open meeting, scheduled for January 20.<sup>45</sup>

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<sup>40</sup> Intervenor Clear View Alliance (“CVA”) submitted prefiled Direct Testimony of Mr. Frank O. McIlwain, P.E. to the effect that construction of the transmission line along Link B19c (an alternative to Y11) would constitute an obstruction for the purposes of Federal Aviation Administration’s regulations. CVA Ex. 7 at 8-9, Admin. R. Binder 12. *See also* Attachment B.

<sup>41</sup> Open Meeting Tr. at 111 (Jan. 13, 2011), attached to this Brief as Attachment C and submitted to this Court for review pursuant to the APA, Tex. Gov’t Code Ann. § 2001.175(e) (West 2008 & Supp. 2010). Although Mr. Neiman was the spokesman for the CVA group, he also owned property north of the Kimble County Airport that would be impacted by the use of Link b23a. Application, LCRA TSC Ex. 1 at Attachment 4, Admin. R. Binders 16-22.

<sup>42</sup> In fact, at that Open Meeting, the Commissioners made it clear to the audience that comments made at the open meeting are “not evidence” and continued by stating that “[t]he record is closed in this case.” Open Meeting Tr. at 62 (Jan. 13, 2011) (Attachment C).

<sup>43</sup> Open Meeting Tr. at 111 (Jan. 13, 2011) (Attachment C).

<sup>44</sup> Open Meeting Tr. at 111-118, 128-133, 256-264, 296-297 (Jan. 13, 2011) (Attachment C).

<sup>45</sup> Open Meeting Tr. at 301 (Jan. 13, 2011) (Attachment C).

Following the open meeting held on January 13, LCRA TSC personnel performed a field evaluation of the Neiman Modification in Junction on January 15, 2011.<sup>46</sup> On January 19, 2011, LCRA TSC filed a letter with the Commission reporting the results of its field reconnaissance.<sup>47</sup> While LCRA TSC's engineers determined that the exact modification proposed by Mr. Neiman at the January 13, 2011 open meeting was not safe, LCRA TSC proposed its own alternative version of that newly-proposed and extra-record modification in its January 19, 2011 letter (the "LCRA TSC Modification").<sup>48</sup>

Neither the Neiman Modification nor the LCRA TSC Modification were ever proposed or discussed at the hearing on the merits for PUC Docket No. 38354, nor were they ever submitted for admission into the record prior to the issuance of the PFD. Both of these modifications are very different from the modification to Link Y11 proposed at the contested case hearing. Intervenor group CVA did indeed propose a modification of Link Y11 at the contested case hearing.<sup>49</sup> Plaintiffs cannot adequately describe the differences in these proposed modifications in words. Only a visual examination of CVA's modification proposed at the contested case hearing adequately demonstrates the large and dramatic differences between it and both the Neiman Modification first birthed at the open meeting and the LCRA TSC Modification designed subsequent to the first open meeting.<sup>50</sup>

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<sup>46</sup> LCRA TSC letter to PUC Commissioners at 2 (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454, attached hereto to this Brief as Attachment D and submitted to the Court for review pursuant to Tex. Gov't Code Ann. § 2001.175(e) (West 2008 & Supp. 2010).

<sup>47</sup> LCRA TSC letter to PUC Commissioners at 1 (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D).

<sup>48</sup> LCRA TSC letter to PUC Commissioners at 2, Exhibit A and Exhibit B (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D).

<sup>49</sup> Map of Proposed Hearing Modification to Link Y11, CVA Ex. 55, Admin. R. Binder 13 (Attachment E).

<sup>50</sup> *Cf. id.* with Attachment D, LCRA TSC letter to PUC Commissioners at Exhibit A and Exhibit B (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454.

In fact, LCRA TSC's letter proves on its face that neither the Neiman nor the LCRA TSC Modifications were considered at the hearing on the merits. LCRA TSC attached two maps to the letter, marked by LCRA TSC as Exhibits A and B. Exhibit A to the letter represented the Neiman Modification first suggested by CVA representative Mr. Neiman at the January 13 open meeting, while Exhibit B represented the new LCRA TSC Modification.<sup>51</sup> LCRA TSC's January 19 letter further states that LCRA TSC's proposal is a "new proposed configuration."<sup>52</sup> Finally, LCRA TSC's counsel admitted at the open meeting on January 20 that neither of the modifications were part of the evidentiary record:

Mr. Rodriguez: Yes, Mr. Chairman. That modification [the Neiman Modification]—that proposed modification was not part of the record. We finished the case without having the ability or the chance to look at this. Mr. Bayliff [counsel for Neiman] contacted us sometime in December and asked if we would be willing to look at a modification. Brad [Bayliff] came over and met with Mr. Mettie (phonetic) and myself, and this was our understanding of what they were proposing....<sup>53</sup>

The facts are obvious and unassailable: the two modifications were not proposed until months after the administrative record closed; therefore, the evidentiary record contains no facts to support either modification. These facts are crucial because the Commission ultimately adopted the LCRA TSC Modification to Link Y11, which Plaintiffs will herein refer to as the "Link Y11 Reroute."

On January 20, 2011, the Commission again considered the McCamey D to Kendall transmission line at an open meeting.<sup>54</sup> The Commissioners discussed LCRA TSC's letter filed

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<sup>51</sup> LCRA TSC letter to PUC Commissioners at 2 (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D).

<sup>52</sup> *Id.*

<sup>53</sup> Open Meeting Tr. at 47 (Jan. 20, 2011), attached to this Brief as Attachment F and submitted to this Court for consideration pursuant to Tex. Gov't Code Ann § 2001.175(e) (West 2008 & Supp. 2010).

<sup>54</sup> Open Meeting Tr. at 41 (Jan. 20, 2011) (Attachment F).



the previous day at length throughout the meeting.<sup>55</sup> Despite the fact that LCRA TSC's proposal lay wholly outside of the evidentiary record,<sup>56</sup> the Commissioners expressed their approval of the LCRA TSC Modification, and voted to order the construction of Route MK 63 using the Link Y11 Reroute, and even rechristened the route "Modified Route MK 63."<sup>57</sup> The result of the Link Y11 Reroute will be construction of the transmission line much closer to downtown Junction than any routes that were examined at the hearing and on the record, thereby materially and substantially prejudicing the rights of Plaintiff City of Junction.<sup>58</sup>

Proponents of the Commission's Order will no doubt argue that because the Y11 Reroute will be constructed only on property noticed by LCRA TSC in its initial Application, the Commission was within its bounds to order such a reroute. However, while the Y11 Reroute will be located only within the notice corridor, the location, manner, cost and impact of the Y11 Reroute is so very different from Link Y11 as proposed in LCRA TSC's Application that it essentially constitutes a brand new link.<sup>59</sup> Therefore, any arguments as to notice issues will be beside the point because there is not one piece of evidence in the administrative record to suggest that the new link is either feasible or advisable.

As demonstrated above, there is not even a scintilla of evidence to support the Link Y11 Reroute because this route modification was not proposed until after the administrative record had closed. Though the Commission acknowledged that the record did not contain evidence on the modification, the Commission nevertheless incorporated that modification into its Order. In

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<sup>55</sup> Open Meeting Tr. at 44-64, 71 (Jan. 20, 2011) (Attachment F).

<sup>56</sup> The Commissioners even considered reopening the administrative record, but decided against that course of action. Open Meeting Tr. at 200 (Jan. 13, 2011) (Attachment C).

<sup>57</sup> Open Meeting Tr. at 71, 193-94 (Jan. 20, 2011) (Attachment F). Order at FOFs 115, 118a, 160 (Jan. 24, 2011), Admin. R. Binder 10, Item 455.

<sup>58</sup> LCRA TSC letter to PUC Commissioners at Exhibit B (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D). The original Link Y11 is shown in blue and yellow, while LCRA TSC's Y11 Reroute is shown in green.

<sup>59</sup> Cf. Attachment B to this Brief with Attachment D at Exhibit B.

violation of APA § 2001.174(2)(E), the Order is completely unsupported by substantial evidence considering the reliable and probative evidence in the record as a whole. Therefore, Plaintiffs respectfully request this Honorable Court to reverse the Order and remand this matter to the Commission.

**2. The Commission's Order prejudices Plaintiffs' substantial rights because the Order violates constitutional and statutory provisions, was made through unlawful procedure and is affected by other error of law.**

The Commission's Order must be reversed because it substantially prejudices the rights of Plaintiffs City of Kerrville, Kerrville Public Utility Board, and City of Junction, and of Intervenor Kerr County. A court "shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (A) in violation of a constitutional or statutory provision... (C) made through unlawful procedure; [or] (D) affected by other error of law..."<sup>60</sup> The Order is based upon representations made at the Commission's open meetings, months after the evidentiary record had closed, without the opportunity for other parties to inspect and respond to such representations, contrary to the mandates of due course of law. Therefore, the Order was issued illegally and must be reversed.

The Commission's consideration of assertions made outside of the evidentiary record denied Plaintiffs their fundamental right to due course of law under the Texas Constitution.<sup>61</sup> Due course of law requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.<sup>62</sup> The Commission's own procedural rules incorporate this fundamental right to due course of law. The rules regarding the submission of late evidence requires that "evidence shall not be admitted without an opportunity for inspection, objection, and cross-

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<sup>60</sup> Tex. Gov't Code Ann. §§ 2001.174(2)(A),(C) and (D) (West 2008 & Supp. 2010).

<sup>61</sup> Tex. Const. art. I, § 19.

<sup>62</sup> *University of Texas Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995).

examination by all parties.”<sup>63</sup> Therefore, in order to be afforded due course of law, Plaintiffs are entitled to a meaningful opportunity to respond to all evidence the Commission considers, even if such evidence is late-admitted.

The Commission did not afford Plaintiffs the chance to inspect and respond to all information the Commission considered in reaching its decision in PUC Docket No. 38354. While the Commission never reopened the record,<sup>64</sup> the Commission heard what amounted to “new evidence” from various parties. The Commission entertained extra-evidentiary comments from a number of parties at its open meetings, including CVA representative Bill Neiman, LCRA TSC counsel Fernando Rodriguez, and even LCRA TSC’s engineer Curtis Symank.<sup>65</sup> The Commission’s Order is based upon these extra-evidentiary representations, most notably the January 19, 2011 letter filed by LCRA TSC (discussed at length above).<sup>66</sup>

The Commission’s reliance on new evidence filed on January 19 and further presented at the open meeting on January 20, 2011 substantially harmed and prejudiced the rights of all parties to a fair hearing. Had the parties had the opportunity to review the new evidence submitted regarding the Y11 Reroute, they could have objected to this evidence or performed other tests of its veracity, through cross-examination. However, no party was afforded the opportunity to review the new evidence and challenge it; the information was not filed until one day prior to the Commission open meeting. Even had the information been filed earlier, the

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<sup>63</sup> 16 Tex. Admin. Code § 22.203(b)(7) (2001) (Pub. Util. Comm’n. of Tex., Order of Procedure).

<sup>64</sup> See Attachments C and F.

<sup>65</sup> Open Meeting Tr. at 103-135 (Jan. 13, 2011) (Attachment C); Open Meeting Tr. at 46-64 (Jan. 20, 2011) (Attachment F). At the beginning of the January 13, 2011 open meeting, the Chairman chastised the audience that comments taken at the open meetings would be considered merely comments, rather than evidence. Open Meeting Tr. at 62 (Jan. 13, 2011) (Attachment C). However, if the Commission were truly taking public comment, rather than attempting to gather new evidence, it would have no need to hear from LCRA TSC’s expert engineer.

<sup>66</sup> Open Meeting Tr. at 193 (Jan. 20, 2011) (Attachment F) “I think Chair will entertain a motion to approve Route MK 63 as modified pursuant to our discussion today, your memo, the changes that we have discussed for the ordering paragraphs and the findings of fact, and delegate to staff the ability to make nonsubstantive changes.”

Commission itself noted that “[t]he record is closed”<sup>67</sup> and therefore, the parties’ opportunity to lodge objections or enter evidence in the record was similarly terminated.<sup>68</sup> The Link Y11 Reroute forces the transmission line much closer to the heart of downtown Junction than Link Y11 as originally proposed by LCRA TSC in its Application.<sup>69</sup> Therefore, Plaintiffs have been substantially prejudiced by the submission of new evidence without the opportunity to fully examine, contest, or respond to that evidence.

Additionally, the transcripts of the Commission’s January 13 and January 20, 2011 open meetings further establish that the “testimony” heard by the Commission during those meetings swayed the ultimate decision of the Commission. There may be no better example of this than the case of Tierra Linda. Tierra Linda is a rural subdivision in Gillespie County. The ALJs’ selected route, MK 15 Modified, would have been constructed through the Tierra Linda subdivision.<sup>70</sup> The Commission heard extensive and extremely emotional pleas from residents within Tierra Linda at its January 13, 2011 open meeting.<sup>71</sup> As with the Link Y11 Reroute, no parties were able to cross-examine the residents of the Tierra Linda subdivision, or otherwise examine, contest, or respond to the statements provided by the Tierra Linda residents. However, there can be no doubt that the Commission considered these statements when making their decision. While the ALJs’ selected route would have constructed the transmission line through the Tierra Linda subdivision, the Commission selected a route that does not impact the Tierra

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<sup>67</sup> Open Meeting Tr. at 62 (Jan. 13, 2011) (Attachment C).

<sup>68</sup> The Commission prevented cross-examination by parties to the contested case hearing at its open meetings. The Chairman even stopped an intervenor’s comments, stating: “[s]ir, I’m going to have to stop you here. I mean, this is not really an opportunity for you to cross examine LCRA.” Open Meeting Tr. at 281 (Jan. 13, 2011) (Attachment C).

<sup>69</sup> LCRA TSC letter to PUC Commissioners at Exhibit B (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D). The original Link Y11 is shown in blue and yellow, while the LCRA Modification is shown in green.

<sup>70</sup> PFD at 2 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>71</sup> Open Meeting Tr. at 169-213 (Jan. 13, 2011) (Attachment C).

Linda subdivision. The Commission's Order itself proves that the Commission illegally relied upon the highly emotional representations made at the open meetings, rather than the evidence within the record which established the inadvisability of constructing the transmission line through Kerrville.<sup>72</sup>

Plaintiffs' substantial rights to fair consideration of the proposed route for the McCamey D to Kendall transmission line were prejudiced because the Commission based its Order on extra-record and non-evidentiary representations of various parties, well over two months after the evidentiary record had closed. The Order is in violation of a constitutional or statutory provision, made through unlawful procedure, and affected by other error of law because it violates Plaintiffs' constitutional rights to due course of law. Therefore, Plaintiffs respectfully pray this Honorable Court reverse the Commission's Order.

#### **POINT OF ERROR NO. 2**

**The Order illegally changes findings of fact and conclusions of law from the Administrative Law Judges' recommendation, in violation of the Texas Administrative Procedure Act and Commission rules.<sup>73</sup>**

The Order illegally changes a number of findings of fact and conclusions of law from the Administrative Law Judges' recommendation in violation of the Texas Administrative Procedure Act and Commission rules. When an agency delegates a matter to the State Office of Administrative Hearings, the APA limits the manner by which an agency may modify or vacate the findings of the SOAH administrative law judge.<sup>74</sup> Additionally, the Commission's own rules limit when it may modify or vacate the findings of an administrative law judge in a contested case proceeding, in a manner similar to the APA. Under both the APA and the Commission

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<sup>72</sup> See Points of Error 3 and 4, below.

<sup>73</sup> Order at 2-3, FOFs 24, 25, 30, 40, 44, 52, 52a, 77, 79, 83, 100, 102, 121, 125, 126, 151, 159 and COLs 9, 10 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>74</sup> Tex. Gov't Code Ann. § 2001.058(e) (West 2008 & Supp. 2010).

rules, an agency must provide specific, delineated explanations for changing an ALJ's recommendation. In the case at hand, the Commission's Order fails to provide even one of the specific, delineated reasons contained in the APA and Commission rules. Therefore, the Order violates both the APA and the Commission's rules, and must be reversed and remanded.

The Texas Administrative Procedure Act limits agencies' ability to modify decisions made by administrative law judges. It is not enough that an agency does not like the results of an ALJ's decision. Rather:

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.<sup>75</sup>

Texas courts have interpreted this statutory provision to mean that state agencies, such as the Commission, must respect the findings of an administrative law judge. The Texas Supreme Court has held that "[i]f a board could find additional facts, resolving conflicts in the evidence and credibility disputes, it would then be serving as its own factfinder despite delegating the factfinding role to a hearing examiner, and the process of using an independent factfinder would be meaningless."<sup>76</sup> The Third Court of Appeals has similarly held that an agency may not arbitrarily change findings of fact made by a SOAH administrative law judge, because the ALJ has heard all of the evidence and is best suited to making credibility determinations.<sup>77</sup> The court

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<sup>75</sup> *Id.*

<sup>76</sup> *Montgomery Indep. School Dist. v. Davis*, 34 S.W.3d 559, 564 (Tex. 2000).

<sup>77</sup> *Flores v. Employees Ret. Sys. of Texas*, 74 S.W.3d 532, 540 (Tex.App.—Austin 2002, pet. denied).

stressed the importance of the SOAH ALJ as an independent factfinder, noting that SOAH was “created in response to fairness concerns raised by the fact that hearing examiners employed by the interested agency were directly accountable to it and, thus, did not have the appearance of disinterested hearings officers.”<sup>78</sup> Precedent clearly establishes that because ALJs are independent factfinders, state agencies may not modify ALJs’ decisions with impunity. Rather, the agency’s role is more akin to an appellate court reviewing an agency decision under the substantial evidence rule — deference is to be given to the factfinder.

Further, if an agency has rules concerning the modification of an ALJ’s decision, the Texas Third Court of Appeals looks to the agency’s rules to determine whether an agency appropriately modified a decision. In the case of *Flores*, the Employees Retirement System of Texas (“ERS”) had promulgated rules requiring it to provide a written explanation for any change it makes to an ALJ’s findings of fact or conclusions of law, similar to the requirements of APA § 2001.058(e).<sup>79</sup> Those rules limited the ERS Board’s ability to change findings of fact or conclusions of law made by a hearings examiner.<sup>80</sup> The case concerned the denial of occupational disability retirement benefits to plaintiff Flores. While the ALJ found that Flores was eligible to receive such benefits, the ERS Board disagreed.<sup>81</sup> Notably, the ERS Board substantially modified the findings of the ALJ to support a conclusion that Flores was not eligible for disability retirement benefits.<sup>82</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 541-42. The Board could only change an ALJ’s finding or conclusion if it was: clearly erroneous or illogical; against the weight of the evidence; based on misapplication of the rules of evidence or insufficient review of the evidence; inconsistent with the terms or intent, as determined by the board, of benefit plan or insurance policy provisions; or not sufficient to protect the public interest, the interests of the plans and programs for which the board is trustee, or the interests, as a group, of the participants covered by such plans and programs. The Board’s rules further stated that the Board’s Order must contain a written statement of the reason and legal basis for each change made based on the policy reasons listed in the rule. *Id.* at 542.

<sup>80</sup> *Id.* at 541-42.

<sup>81</sup> *Id.* at 536-38.

<sup>82</sup> *Id.* at 538-39.

In *Flores*, the court held that ERS failed to follow its own rules. Specifically, ERS' written explanations for deleting findings proposed by the ALJ stated only that the changed findings were "not relevant" or related to facts that were not in dispute.<sup>83</sup> ERS deleted portions of other findings without providing any explanation at all.<sup>84</sup> ERS also deleted a conclusion of law and substituted another in its place without support in the decision's findings of fact; this new conclusion of law was, in fact, contrary to the great weight of the evidence in the proceeding.<sup>85</sup> The court held that these actions gave the appearance that the Board was arriving at a predetermined result, regardless of the facts in evidence.<sup>86</sup> ERS' failure to follow its own rules was determined to be arbitrary, capricious, and reversible.

The case at hand is markedly similar to *Flores*. Like ERS, the Public Utility Commission has promulgated a rule governing when it may modify the decision of an administrative law judge. Under that rule, the Commission may change a finding of fact or conclusion of law made by the administrative law judge, or vacate or modify an order issued by the administrative law judge *only* if the Commission:

- (1) determines that the administrative law judge:
  - (A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or
  - (B) issued a finding of fact that is not supported by a preponderance of the evidence; or
- (2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.<sup>87</sup>

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<sup>83</sup> *Id.* at 542.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 542-43.

<sup>86</sup> *Id.* at 542.

<sup>87</sup> 16 Tex. Admin. Code § 22.262(a) (2011) (Pub. Util. Comm'n of Tex., Commission Action after a Proposal for Decision).



Like ERS, the Commission must give one of the listed specific explanations for modifying administrative law judges' findings of fact and conclusions of law.<sup>88</sup>

Similar to ERS' action giving rise to the *Flores* case, the Commission dramatically changed the decision of the ALJs in the case at hand. In PUC Docket No. 38354, the ALJs recommended construction of the McCamey D to Kendall transmission line along PUC Staff's recommended route, Route MK 15 Modified.<sup>89</sup> Route MK 15 Modified avoids the developed areas of the cities of Junction and Kerrville, and of Kerr County. However, the Commission ordered a very different route: Modified Route MK 63,<sup>90</sup> which will bisect *both* Junction and Kerrville.

Despite completely changing the decision of the ALJs, the Commission did not find that the administrative law judges did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions.<sup>91</sup> Neither did the Commission find that the ALJs issued findings of fact not supported by a preponderance of the evidence.<sup>92</sup> Finally, the Commission did not determine that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.<sup>93</sup> Even though the Commission's rules mandate that the Commission find at least one of the foregoing reasons in order to change the ALJ's findings, the Order does not contain a single one of the required explanations for the complete change in the ALJs' findings.<sup>94</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> PFD at 3, 92 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>90</sup> Order at 2 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>91</sup> 16 Tex. Admin. Code § 22.262(a)(1)(A) (2011) (Pub. Util. Comm'n of Tex., Commission Action after a Proposal for Decision).

<sup>92</sup> *Id.* at § 22.262(a)(1)(B).

<sup>93</sup> *Id.* at § 22.262(a)(2).

<sup>94</sup> Specifically, the Commission deleted FOFs 27-29, 31, 58, 59, 111, 112, 130, 139; added new FOFs 31a, 52a, 118a, 159-161; and modified FOFs 26, 30, 33, 48, 83, 92-94, 100, 108, 115, 120, 122-125, 144 and COL 10.

The Order only provides the following explanation for the substantial and numerous changes to the ALJ's decision: "the Commission finds that I-10 is a more compatible right-of-way for paralleling purposes than the alternative paralleling opportunities available."<sup>95</sup> The Commission's use of the word "finds," in particular, demonstrates that the Commission essentially stepped into the shoes of the ALJs in order to create these new findings. Just as in the *Flores* case, the Commission's decision lacks sufficient explanation and appears to be designed to achieve a predetermined result to route the transmission line along I-10.<sup>96</sup>

With regard to the Link Y11 Reroute discussed above, the Commission made no explanation for its modification of the ALJs' decision, other than stating that the Reroute is technically feasible.<sup>97</sup> The Order provides no justification for the modification, contrary to the mandates of P.U.C. Proc. R. 22.262(a). Again, similar to the *Flores* case, the Commission changed findings of fact for "unauthorized and unexplained" reasons.<sup>98</sup>

As the court held in *Flores*, such action is arbitrary and capricious; the Commission's actions in this case are no less arbitrary and capricious. The Commission acted arbitrarily and capriciously by reweighing facts and changing the ALJs' findings of fact and conclusions of law for unauthorized and unexplained reasons, in violation of its own rules and the APA, substantially prejudicing the material rights of Plaintiffs. Therefore, the Commission's Order should be reversed and remanded.

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<sup>95</sup> Order at 2 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>96</sup> The Chairman even stated at the January 13, 2011 open meeting: "I mean, I'll cut to the chase on this. From sort of day one I've been in favor of using as much of I-10 as possible." Open Meeting Tr. at 260 (Jan. 13, 2011) (Attachment C).

<sup>97</sup> Order at 2 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455. "The Commission has modified MK 63 in the vicinity immediately south of the Kimball County Airport by moving link Y11 as far south as safely and reliably possible using above ground construction while still affecting only noticed landowners."

<sup>98</sup> Order at FOFs 115, 118, 118a (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

### POINT OF ERROR NO. 3

**The Commission erred by disregarding its own policy of prudent avoidance.<sup>99</sup>**

**1. The Commission arbitrarily and capriciously disregarded its own policy of prudent avoidance.**

The Commission acted arbitrarily and capriciously by completely disregarding its own policy of prudent avoidance when selecting Modified Route MK 63. Agencies must follow their own policies; the failure to do so is arbitrary and capricious and constitutes reversible action.<sup>100</sup> Modified Route MK 63 does not comply with the Commission's own policy of prudent avoidance. Therefore, the Commission's selection of Modified Route MK 63 must be reversed.

Agencies are not at liberty to disregard their own policies when it suits them. Instead, courts construe agency rules in the same manner as statutes.<sup>101</sup> While courts generally defer to an agency's reasonable interpretation of its own rules, agencies are prohibited from creating broad amendments or exceptions to its rules through administrative adjudication, rather than the agency's rulemaking authority.<sup>102</sup> To do otherwise would violate the provisions of the Administrative Procedure Act.<sup>103</sup> Therefore, "[t]he failure of an agency to follow the clear, unambiguous language of its own rules is arbitrary and capricious, and will be reversed."<sup>104</sup> The Public Utility Commission is no exception; it must also follow the policies that it creates.

The Commission promulgated the policy of prudent avoidance in order to minimize the impact of radiation on humans from high voltage transmission lines. Commission Substantive Rule 25.101(a)(4) defines "prudent avoidance" as "[t]he limiting of exposures to electric and

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<sup>99</sup> Order at 2-3, FOFs 22, 23, 24, 25, 30, 159 and COL 10 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>100</sup> *Frank v. Liberty Ins. Corp.*, 255 S.W.3d 314, 324 (Tex.App.—Austin 2008, pet denied).

<sup>101</sup> *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999).

<sup>102</sup> *Id.* at 255.

<sup>103</sup> *Id.*

<sup>104</sup> *Frank*, 255 S.W.3d at 324.

magnetic fields that can be avoided with reasonable investments of money and effort.”<sup>105</sup> The rule mandates that the Commission consider whether an application for a new transmission line conforms with the policy of prudent avoidance. In contested case hearings for certificates of convenience and necessity, the policy of prudent avoidance is applied by measuring habitable structures within a certain distance of the transmission line easement’s centerline.<sup>106</sup>

Compliance with the policy of prudent avoidance is generally one of the key factors for Commission consideration of transmission line routing. The Commission had a duty to follow its own policy of prudent avoidance in this case and to select a route that minimized impacts to habitable structures with a reasonable investment of money and effort.

However, the Order proves that the Commission turned the policy of prudent avoidance on its head. Modified Route MK 63 impacts 134 habitable structures, more than almost all of the routes proposed in LCRA TSC’s Application. Only two of LCRA TSC’s 60 proposed routes impact more habitable structures.<sup>107</sup> The average route would only impact 51.5 habitable structures and some routes impacted as few as 17 habitable structures.<sup>108</sup> The ALJs recommended Route MK 15 Modified largely because of its impact to only 55 habitable structures.<sup>109</sup> Similarly, LCRA TSC selected Route MK 13 as its preferred route partially because it would impact the “second-fewest habitable structures (18) within 500 ft” compared to the other routes proposed in the Application.<sup>110</sup> Rather than selecting any number of proposed

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<sup>105</sup> 16 Tex. Admin. Code § 25.101(a)(4) (2011) (Pub. Util. Comm’n of Tex., Certification Criteria).

<sup>106</sup> For the case at hand, habitable structures were counted if they were located within 500 feet of the proposed route’s centerline. Application, LCRA TSC Ex. 1 at 33, Admin. R. Binders 16-22.

<sup>107</sup> Application, LCRA TSC Ex. 1 at 33-34, Admin. R. Binders 16-22.

<sup>108</sup> *Id.*

<sup>109</sup> Criteria for Selected Routes (Excluding Modifications), LCRA TSC Ex. 26, Admin. R. Binder 29; PFD at 3, Admin. R. Binder 9, Item No. 412. “The ALJs recommend Staff’s MK15 because it affects fewer habitable structures and does not have any habitable structures within the ROW [right-of-way].”

<sup>110</sup> Application (Environmental Assessment), LCRA TSC Ex. 1 at 6-96, Admin. R. Binders 16-22.

routes that would have impacted fewer habitable structures, the Commission chose Modified Route MK 63, which negatively impacts 134 habitable structures.<sup>111</sup>

Crucially, Modified Route MK 63 does not simply impact a high number of habitable structures. Rather, because the route will be constructed within the relatively dense areas of both Junction and Kerrville, the route's impacts to habitable structures is much more detrimental than elsewhere in the study area. LCRA TSC acknowledged in its prefiled direct testimony that "along IH-10 and near Kerrville, it became increasingly difficult to avoid populated areas directly along IH-10 and the IH10 [sic] corridor because of the population density and presence of businesses and rural subdivision developments in the immediate area of Kerrville."<sup>112</sup> As Modified Route MK 63 enters Kerrville, it comes into close proximity to 59 newly affected habitable structures. Of those 59 structures, 17 are located "within the proposed right-of-way."<sup>113</sup> These habitable structures must be "relocated" (in essence, demolished), before construction of the transmission line may take place.<sup>114</sup> Habitable structures in this instance includes homes. Construction of the transmission line through Kerrville will force some homeowners to lose their residences. In fact, the configuration of links along I-10 through Kerrville is the *only* configuration proposed in PUC Docket No. 38354 that would require the condemnation of citizens' homes. Those habitable structures that are allowed to remain will be much closer to the line than habitable structures would be along other routes.

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<sup>111</sup> Order at FOFs 120, 124, 125 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>112</sup> Direct Testimony of Rob R. Reid, LCRA TSC Ex. 9 at 19, Admin. R. Binder 28.

<sup>113</sup> Application (Environmental Assessment Table 6-78), LCRA TSC Ex. 1 at 6-293, Admin. R. Binders 16-22. Plaintiffs note that the number of habitable structures within the right of way must be extrapolated from the habitable structure statistics for Route MK 33 because the Commission ordered Modified Route MK 63 was not filed in the LCRA TSC's Application—thus, specific statistics regarding the route are not available in the record. Route MK 33 contains many of the same links as Modified Route MK 63, including Links Y16 through Y20, which are the only filed links that list any habitable structures within the transmission line right-of-way.

<sup>114</sup> Tr. Vol. 1 at 245, Admin. R. Binder 33, Transcripts, Vol. J; Direct Testimony Curtis D. Symank, P.E., LCRA TSC Ex. 7 at 31, Admin. R. Binder 28.

The second component of prudent avoidance is minimizing effects on habitable structures through reasonable investments of money and effort, generally measured by project cost. The Commission's selected route Modified Route MK 63 costs more money to construct, in addition to impacting more habitable structures in a more negative manner than virtually any route proposed. LCRA TSC's preferred route MK 13 would cost only approximately \$266 million to construct.<sup>115</sup> Modified Route MK 63 would cost approximately \$360.5 million to construct.<sup>116</sup> By contrast, the route recommended by the ALJ (Route MK 15 Modified) would cost only \$302.3 million to construct.<sup>117</sup> The average cost to construct one of LCRA TSC's 60 proposed routes is \$297.0 million.<sup>118</sup> Modified Route MK 63 clearly violates the Commission's policy of prudent avoidance because it costs much more to construct and negatively impacts more habitable structures in a worse manner than virtually all other routes.

Therefore, the Commission's Order disregards the Commission's own policy of prudent avoidance. Modified Route MK 63 will be very expensive to construct and will negatively impact many habitable structures in an extremely detrimental manner. The Order fails to comply with the Commission's own rules and thus constitutes arbitrary and capricious action. Plaintiffs respectfully pray the Commission's Order be reversed and remanded.

**2. The Commission's Order constitutes an abuse or clearly unwarranted exercise of discretion.**

The Commission's Order further errs because it is characterized by an abuse of discretion or clearly unwarranted exercise of discretion. An agency errs if it reaches a completely

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<sup>115</sup> Criteria for Selected Routes (Excluding Modifications), LCRA TSC Ex. 26, Admin. R. Binder 29.

<sup>116</sup> Order at FOFs 120, 124, 125 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>117</sup> Criteria for Selected Routes (Excluding Modifications), LCRA TSC Ex. 26, Admin. R. Binder 29.

<sup>118</sup> Direct Testimony of Curtis D. Symank, P.E., First Errata, Att. No. 2, LCRA TSC Ex. 1B at 2 of 12, Admin. R. Binder 25.

unreasonable result after weighing only relevant factors.<sup>119</sup> The Order considers both cost and impact of the line on humans, measured by impacts to habitable structures.<sup>120</sup> Cost and impact of the line on humans are both relevant factors as to prudent avoidance. However, as discussed above, the Order selects a route that impacts almost 80 habitable structures more than the route selected by the ALJs, at an increased cost of approximately \$60 million.<sup>121</sup> In light of the Commission's policy of prudent avoidance, the Commission's choice of Route MK 63 Modified is completely unreasonable and is therefore marked by an abuse of discretion or a clearly unwarranted exercise of discretion. Therefore, Plaintiffs respectfully request this honorable court to reverse the Order.

**3. The Commission's Order lacks an evidentiary basis for the assertion that Route MK 63 comports with the policy of prudent avoidance.**

As a consequence of the Commission's disregard for its own policy of prudent avoidance, the Order suffers from a procedural defect: portions of it are not supported by evidence. An agency's action is reversible if it is not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole.<sup>122</sup> In the course of the substantial evidence review, the court will examine whether an agency's factual findings are reasonable in light of the evidence in which they were inferred.<sup>123</sup> The Commission's Order is completely unreasonable in light of the evidentiary record, because no evidence supports the assertion that Modified Route MK 63 comports with the policy of prudent avoidance. In fact, the great preponderance of the evidence in the record establishes the opposite.

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<sup>119</sup> *TGS-NOPEC Geophysical Co. v. Combs*, 268 S.W.3d 637, 651-52 (Tex.App.—Austin 2008, pet. granted).

<sup>120</sup> Order at FOFs 120, 124, 125 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>121</sup> Criteria for Selected Routes (Excluding Modifications), LCRA TSC Ex. 26, Admin. R. Binder 29; Order at FOFs 120, 124 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>122</sup> Tex. Gov't Code Ann. § 2001.174(2)(E) (West 2008 & Supp. 2010).

<sup>123</sup> *Hammack v. Pub. Util. Comm'n of Tex.*, 131 S.W.3d 713, 725 (Tex.App.—Austin 2004, pet. denied).

Due to the fact that the selected route was not proposed in LCRA TSC's Application, there is no evidence in the record to support the Order's finding that Modified Route MK 63 comports with the policy of prudent avoidance. Route MK 63 (as of yet unmodified) was not proposed until near the end of the hearing on the merits. It was first proposed as part of LCRA TSC's Exhibit 26, admitted on November 1, 2010, the day before the hearing concluded.<sup>124</sup> While LCRA TSC presented evidence that all of its filed proposed routes in its Application comport with the policy of prudent avoidance,<sup>125</sup> Route MK 63 (unmodified) was not proposed in LCRA TSC's Application.<sup>126</sup> As Route MK 63 was modified at the Commission's January 20, 2011 open meeting as discussed above, Modified Route MK 63 will certainly impact additional habitable structures, although the exact ramifications of the Link Y11 Reroute are undetermined due to the fact that the illegal Link Y11 Reroute was suggested outside of the evidentiary record. As established above, Modified MK 63 negatively impacts more habitable structures in a worse manner and at a higher cost than the ALJs' selected route and virtually all routes proposed in the Application. The route clearly does not comport with the policy of prudent avoidance. To the contrary, the great preponderance of the evidence in the record proves that the selected route violates the policy because only two routes impact more habitable structures at a higher cost.<sup>127</sup>

Therefore, Commission Order Findings of Fact Nos. 125 and 126 are not supported by any of the reliable and probative evidence in the administrative record as a whole, in violation of APA § 2001.174(2)(E). Plaintiffs respectfully request this Court reverse and remand the Commission's Order.

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<sup>124</sup> Tr. Vol. 6 at 1177, Admin. R. Binder 33, Transcripts, Vol. P.

<sup>125</sup> Direct Testimony of Sara Morgenroth, LCRA TSC Ex. 2 at 30, Admin. R. Binder 25.

<sup>126</sup> Application, LCRA TSC Ex. 1 at 33-34, Admin. R. Binders 16-22.

<sup>127</sup> *See generally*, Point of Error No. 3, above.



#### POINT OF ERROR NO. 4

**The Commission erred by disregarding statutory criteria.<sup>128</sup>  
The Commission's Order arbitrarily and capriciously  
disregarded the statutory criteria of community values.**

The Commission's disregard of expressed community values within the study area constitutes arbitrary and capricious action, and is further characterized by an abuse of discretion. Agency action is reversible by a court when such agency action is arbitrary or capricious or characterized by an abuse of discretion.<sup>129</sup> An agency acts arbitrarily and capriciously or abuses its discretion when it fails to consider a factor the legislature required it to consider.<sup>130</sup> PURA specifically lists "community values" as a factor that the Commission must consider when considering the potential placement for a new transmission line.<sup>131</sup> However, in the case at hand, the Commission clearly disregarded the community value factor the legislature requires the Commission to consider in cases of this nature.

In PUC Docket No. 38354, the community clearly expressed its preference that the proposed McCamey D to Kendall transmission line avoid developed areas and habitable structures. At public open house meetings held by LCRA TSC prior to the contested case hearing, attendees expressed their common concern about the impact of the proposed transmission line on development and subdivisions.<sup>132</sup> The Environmental Assessment ("EA") prepared for LCRA TSC in preparing its Application provides specific details about expressed community values at public open house meetings. A chart compiling the attendees' ranked

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<sup>128</sup> Order at 2-3, FOFs 124, 125, 126, 159, 160 and COLs 9, 10 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>129</sup> Tex. Gov't Code Ann. § 2001.174(2)(E) (West 2008 & Supp. 2010).

<sup>130</sup> *City of El Paso v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 179, 184 (Tex. 1994).

<sup>131</sup> Tex. Util. Code Ann. § 37.056(c)(4)(A) (West 2007 & Supp. 2010).

<sup>132</sup> Application, LCRA TSC Ex. 1 at 24-27, Admin. R. Binders 16-22. The Environmental Assessment prepared for LCRA TSC in preparing its Application provides specific details about expressed community values at public open house meetings.

preferences from the EA is attached hereto and incorporated herein as Attachment G.<sup>133</sup> This chart demonstrates overwhelming community support for avoiding developed areas and habitable structures.

Additionally, community leaders within the study area testified as to the importance that the proposed transmission line avoid developed areas. The testimony of community leaders is extremely persuasive evidence as to values within a community. In our society of representative government, there are few better ways in which to demonstrate the sentiment of a community than through the public testimony of the officials elected to represent that community.

The City of Kerrville submitted direct testimony about the impact of the proposed transmission line on existing habitable structures and impending development within the City.<sup>134</sup> The prefiled Direct Testimony of Kerrville Mayor Wampler established the City's concern that "existing homes and businesses will relocate due to the transmission line" if the line were to be constructed through Kerrville.<sup>135</sup> Similarly, Kerr County submitted direct testimony regarding its concerns over the impacts of the transmission line on existing homes and businesses in both Kerrville and Kerr County, as well as on potential future development.<sup>136</sup> Kerr County also submitted cross-rebuttal testimony, establishing a pattern of development along I-10, particularly along major intersections, such as Highway 16 and Harper Road.<sup>137</sup> Other intervenors submitted similar evidence during the contested case hearing. Cecil Atkission, a Kerrville businessman, submitted direct testimony regarding his concern that portions of the proposed transmission line

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<sup>133</sup> Attachment G has been created from LCRA TSC's Application, and specific pages from the Application have been indicated within Attachment G, Admin. R. Binders 16-22.

<sup>134</sup> Direct Testimony of David Wampler, Kerrville Ex. 1 at 4-7, Admin. R. Binder 15.

<sup>135</sup> *Id.* at 7.

<sup>136</sup> Direct Testimony of Pat Tinley, Kerr County Ex. 1 at 5-7, Admin. R. Binder 15.

<sup>137</sup> Cross-Rebuttal Testimony of Pat Tinley, Kerr County Ex. 2 at 4-5, Atts. A and B, Admin. R. Binder 15.

would traverse “directly through areas with a great deal of habitable structures.”<sup>138</sup> Therefore, the substantial evidence in the record establishes a strong community value of avoiding building the transmission line through developed areas of high habitation.

The Commission’s Order correctly identifies that the evidence reflects strong community values for “reducing the effect of the line on habitable structures, particularly in developed areas...”<sup>139</sup> However, the Commission’s Order completely disregards that value. The Order selects the route with the greatest impact on developed areas and upon the habitable structures within those areas, despite a multitude of proposed routes that would not affect any developed areas.

The study area for the McCamey D to Kendall transmission line is largely rural in nature, and consequently very few of LCRA TSC’s proposed routes impact developed areas. LCRA TSC’s Application states that “[c]attle, sheep, and goat ranching, along with wild game hunting (deer, antelope, turkey, javelina, quail, and a few exotic species), is the current primary form of land use for most of the project area. The majority of the land use within the project area consists of rangeland, but some areas do contain cropland and improved pastureland used for grazing, seed, and hay production.”<sup>140</sup> The Application similarly notes the lack of municipalities within the study area, noting that the majority of routes do not pass within the city limits of any municipalities.<sup>141</sup> Only eight of the sixty routes proposed in LCRA TSC’s Application would be located within the city limits of any municipality. Further, the only municipalities “at risk” for

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<sup>138</sup> Direct Testimony of Cecil Atkission, Atkission Ex. 1 at 8, Att. A, Admin. R. Binder 11.

<sup>139</sup> Order at FOF 22 (Jan. 24, 2011), Admin. R. Binder 10, Item No. 455.

<sup>140</sup> Application, LCRA TSC Ex. 1 at 12, Admin. R. Binders 16-22. *See also*, Application (Environmental Assessment), LCRA TSC Ex. 1 at 2-61 “[l]and use within the study area is predominantly agricultural, specifically rangeland.” Admin. R. Binders 16-22.

<sup>141</sup> Application, LCRA TSC Ex. 1 at 16, Admin. R. Binders 16-22.

construction of the McCamey D to Kendall transmission lines within city limits were the City of Junction and the City of Kerrville.<sup>142</sup>

Despite the fact that the majority of the routes proposed in the Application did not impact Junction or Kerrville, the Commission's Order places the McCamey D to Kendall transmission line through the city limits of both municipalities. As Modified Route MK 63 passes through the City of Kerrville, it will impact no fewer than 59 habitable structures.<sup>143</sup> Just within Kerrville alone, Modified Route MK 63 impacts more habitable structures than for the entire route of the ALJs' recommended route, MK 15 Modified, which would impact only 55 habitable structures.<sup>144</sup> While the impact on habitable structures in the City of Junction is unknown due to the Commission's illegal Link Y11 Reroute discussed above, it is certain that the impact to Junction will be worse, because maps demonstrate that the line is to be constructed much closer to the heart of the city than the originally proposed Link Y11.<sup>145</sup>

Further, as discussed above, the impact to habitable structures within the developed areas of Junction and Kerrville will be much more severe because the line will be constructed much closer to those habitable structures than elsewhere in the rural study area. While the community values in the record supported placing the transmission line as far away from habitable structures as possible, the Commission ordered construction of the transmission line through the most developed areas possible within the study area.

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<sup>142</sup> *Id.*

<sup>143</sup> Application (Environmental Assessment Table 6-78), LCRA TSC Ex. 1 at 6-293, Admin. R. Binders 16-22. Plaintiffs note that the number of habitable structures within the right of way must be extrapolated from the habitable structure statistics for Route MK 33 because the Commission ordered Modified Route MK 63 was not filed in the LCRA TSC's Application—thus specific statistics regarding the route are not available in the record. Route MK 33 contains many of the same links as Modified Route MK 63, including Links Y16 through Y20, which are the only filed links that list any habitable structures within the transmission line right-of-way.

<sup>144</sup> PFD at 73 (Dec. 16, 2010), Admin. R. Binder 9, Item No. 412.

<sup>145</sup> LCRA TSC letter to PUC Commissioners at Exhibit B (Jan. 19, 2011), Admin. R. Binder 10, Item No. 454 (Attachment D).

The Order completely disregards the expressed community value of maximizing distance from residences and developed areas, in violation of PURA § 37.056(c)(4)(A). Therefore, Plaintiffs respectfully request the court reverse the Commission's Order.

**PRAYER FOR RELIEF**

For the reasons set forth above, Plaintiffs City of Kerrville, Kerrville Public Utility Board, City of Junction and Intervenor Kerr County respectfully pray that the Court reverse the Commission's Order, remand this matter to the Commission, and for any and all other relief to which they are justly entitled.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' and Intervenor Kerr County's Joint Brief on the Merits was served by Certified Mail, Return Receipt Requested, on this 17<sup>th</sup> day of May 2011, to the following counsel of record.

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

<b>APPLICATION OF LCRA</b>	<b>§</b>	<b>BEFORE THE</b>
<b>TRANSMISSION SERVICES</b>	<b>§</b>	
<b>CORPORATION TO AMEND ITS</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE AND</b>	<b>§</b>	
<b>NECESSITY FOR THE PROPOSED</b>	<b>§</b>	
<b>MCCAMEY D TO KENDALL TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GILLESPIE 345-KV CREZ</b>	<b>§</b>	
<b>TRANSMISSION LINE IN SCHLEICHER,</b>	<b>§</b>	
<b>SUTTON, MENARD, KIMBLE, MASON,</b>	<b>§</b>	
<b>GILLESPIE, KERR, AND KENDALL</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	<b>OF TEXAS</b>

**MOTION FOR REHEARING  
OF  
THE CITY OF KERRVILLE, KERR COUNTY,  
KERRVILLE PUBLIC UTILITY BOARD,  
AND THE CITY OF JUNCTION**

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**February 16, 2011**

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

<b>APPLICATION OF LCRA</b>	<b>§</b>	<b>BEFORE THE</b>
<b>TRANSMISSION SERVICES</b>	<b>§</b>	
<b>CORPORATION TO AMEND ITS</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE AND</b>	<b>§</b>	
<b>NECESSITY FOR THE PROPOSED</b>	<b>§</b>	
<b>MCCAMEY D TO KENDALL TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GILLESPIE 345-KV CREZ</b>	<b>§</b>	
<b>TRANSMISSION LINE IN SCHLEICHER,</b>	<b>§</b>	
<b>SUTTON, MENARD, KIMBLE, MASON,</b>	<b>§</b>	
<b>GILLESPIE, KERR, AND KENDALL</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	<b>OF TEXAS</b>

**MOTION FOR REHEARING  
OF THE CITY OF KERRVILLE, KERR COUNTY,  
KERRVILLE PUBLIC UTILITY BOARD,  
AND THE CITY OF JUNCTION**

**TO THE PUBLIC UTILITY COMMISSION OF TEXAS:**

COME NOW, the City of Kerrville, Kerr County, Kerrville Public Utility Board, and the City of Junction (collectively herein the "Movants") and file this Motion for Rehearing, and in support hereof would show the following:

**I. INTRODUCTION**

On January 24, 2011, the Public Utility Commission ("Commission") signed its Order in this docket approving the application of LCRA TSC to amend its certificate of convenience and necessity ("CCN") for the proposed McCamey D to Kendall to Gillespie 345-kV CREZ transmission line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties (the "Application"). The Order directed LCRA TSC to build the project using Route MK63, as modified by the Order.

The Order was mailed to parties and their counsel on January 26, 2011. The undersigned counsel for Movants received the Order on January 27, 2011 via the United States Postal

Service. Under the provisions of Tex. Gov't Code § 2001.146, this Motion for Rehearing is timely filed.

The Commission erred in its selection of modified Route MK 63 on a number of grounds: the Commission erroneously relied upon information outside of the evidentiary record; the Order is not supported by substantial evidence; the Order is based upon unlawful procedure; the Order disregards criteria that must be considered under provisions of the Public Utility Regulatory Act ("PURA") and the Commission's Substantive Rules; and the Order arbitrarily and capriciously modifies the Administrative Law Judges' ("ALJs") findings of fact and conclusions of law without explanation. Movants respectfully request rehearing on the points of error detailed in this filing, and urge the Commission to revise its Order to select Route MK13.

## **II. GROUNDS FOR REHEARING**

### **POINT OF ERROR NO. 1**

**The Commission erred in disregarding the expressed community values of avoiding habitable structures and developed areas.<sup>1</sup>**

The Commission erred because it disregarded expressed community values and therefore, the Order is not supported by substantial evidence, and is arbitrary and capricious and characterized by an abuse of discretion. An agency acts arbitrarily and capriciously when it: (1) fails to consider a factor the legislature required it to consider; (2) considers a legally irrelevant factor; or (3) weighs only relevant factors but reaches a completely unreasonable result.<sup>2</sup> The Legislature requires the Commission to consider "community values" when determining the appropriate route for a transmission line.<sup>3</sup> However, the Commission failed to

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<sup>1</sup> Order at 2-3 (Jan. 24, 2011); FoFs 22, 23, 24, 25, 30, 40, 44, 48, 52, 52a, 159, 160; CoLs 9, 10.

<sup>2</sup> *City of El Paso v. Public Utility Commission*, 883 S.W.2d 179, 184 (Tex. 1994).

<sup>3</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. § 37.056(c)(4)(A) (West 2007 & Supp. 2010) (PURA).

appropriately consider community values at all, as evidenced by the findings of fact contained in the Order.

The Order contains several findings of fact that conflict; this conflict demonstrates a failure to consider community values. Specifically, the Order contains the following conflicting findings of fact:

- 22. Based on input from the open houses and throughout the proceeding, strong community values included: avoiding the Texas Hill Country; *reducing the effect of the line on habitable structures, particularly in developed areas*; reducing the effect on rural residential subdivisions; and building the line with monopoles.
- 23. The community values of avoiding habitable structures in developed areas and avoiding the Hill Country are competing values.
- 30. MK 63 as modified by this Order provides the best balance between the community values of avoiding the Hill Country and avoiding habitable structures and cities.
- 44. The alternative routes that follow all or portions of I-10 will be much more visible to more people than any of the alternative routes away from I-10.
- 48. MK13 has a length of 8.46 miles visible from U.S. and State highways. Staff MK15 Modified would be visible for a length of 49.11 miles from U.S. and State highways. MK33 has a length of 157.87 miles that would be visible along U.S. and State highways. MK63 will be visible for a length of 86.24 miles from U.S. and State highways.<sup>4</sup>

The decision of the Commission to select a modified Route MK 63 is not supported by substantial evidence; no "balancing" of community values was accomplished by the selection of MK 63 as suggested by Finding of Fact No. 30. In fact, and to the contrary, the adoption of modified Route MK 63 could only be accomplished by the complete disregard for the

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<sup>4</sup> Order, FoFs 22, 23, 30, 44, 48 (emphasis added) (Jan. 24, 2011).

community value of avoiding habitable structures and developed areas. Route MK 63 has a greater impact on developed areas *than any other proposed route*, it would be visible to more people than routes off of I-10, and it clearly does not balance the community values at all.

The Proposal for Decision (“PFD”) appropriately acknowledged the expressed community value of avoiding close proximity to a large number of habitable structures and avoiding developed areas, and also balanced that interest with the community value of minimizing the impact to the Texas Hill County.<sup>5</sup> The PFD actually specifically addressed the “top three” community values – Texas Hill Country, habitable structures, and cities, and determined that the route known as Staff MK 15 “strikes a good balance between those interests.”<sup>6</sup> The PFD’s proposed Finding of Fact 28, deleted by the Commission without explanation, provided the “balancing” of community values that the Order now lacks:

28. Kerrville and the Kerrville Public Utility Board have spend [sic] over \$1 million in infrastructure for development along I-10 in the vicinity of Links Y16, Y17b, Y18, Y19b, and Y20, which are included in Routes MK32, 33, 61, and 62.<sup>7</sup>

Modified Route MK 63 passes *directly through* the developed areas within the City of Kerrville, and directly through the area planned for development in Kerrville, which will be served by the plant investment already made by the City of Kerrville and the Kerrville Public Utility Board, as noted by the PFD, and contrary to the expressed community value. Route MK 63, prior to its modification by the Commission on January 20, 2011, affects 134 habitable

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<sup>5</sup> PFD at 20-21. The PFD noted that “the communities of Mason, Fredericksburg, and Kerrville provided testimony that their communities did not want the transmission line through their towns. Staff MK 15 avoids the communities of Eldorado, Sonora, Mason, Menard, and Fredericksburg. Staff MK 15 also circumvents the community of Kerrville and avoids 99 habitable structures (including 17 within the ROW).” PFD at 21. [Footnotes omitted.]

<sup>6</sup> PFD at 23.

<sup>7</sup> PFD at Finding of Fact 28.

structures, 131 of which are newly affected, and 17 of which are *within the right-of-way*.<sup>8</sup> There is no evidence in the record concerning the modifications made to Route MK 63 at the Commission's second open meeting (see Point of Error No. 3, below), therefore there is no evidence regarding whether additional habitable structures will be impacted by the late modifications, or whether the number of affected habitable structures has been thereby reduced. However, it is clear and uncontroverted in the record that the 17 habitable structures that are located within the right-of-way in Route MK 63 are those habitable structures located on Links Y18 and Y19b, adjacent to I-10 in the City of Kerrville, in Kerr County.<sup>9</sup>

Also ignored by the Commission is the fact that Route MK 63 routes the line directly through the Buckhorn Lake Resort, a mobile home community west of Kerrville at the intersection of I-10 and Goat Creek Road (FM 1338) along Link Y16.<sup>10</sup> As Judge Tinley testified, there are over 200 permanent residents of this community, all of whom will be negatively impacted by the location of the transmission line right next to their properties along I-10.<sup>11</sup> These citizens of Kerr County were ignored by the Commission, and the negative impact on their homes did not even rate a comment by the Commission, much less a finding that impacting these habitable structures comports with the community values of the area.

Other routes proposed in the Application impact between 17 and 153 habitable structures.<sup>12</sup> The impact on the habitable structures along I-10 in Kerrville is much more severe

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<sup>8</sup> LCRA TSC Ex. 26 (Criteria for Selected Routes (Excluding Modifications)).

<sup>9</sup> LCRA TSC Ex. 1, Application (Environmental Assessment at 6-293 through 6-295, Table 6-78).

<sup>10</sup> Direct Testimony of Judge Pat Tinley, Kerr County Ex. 1 at 6-7, Att. H.

<sup>11</sup> Hearing on the Merits Tr. at 960 (Cross-examination of Judge Pat Tinley), Oct. 29, 2010.

<sup>12</sup> LCRA TSC Preferred Route MK 13 impacts the second fewest habitable structures at only 18. Rebuttal Testimony of Rob R. Reid, LCRA TSC Ex. 20, Exhibit RRR-3R. Route MK 33 impacts the most at 152. LCRA TSC Ex. 26 (Criteria for Selected Routes (Excluding Modifications)).

than the impact to other habitable structures elsewhere in the study area.<sup>13</sup> The Commission has not ordered the line rerouted away from habitable structures on Segments Y18 and Y19b, and as a result a number of habitable structures stand within the right of way, including at least two permanent, single family residences (not mobile homes).<sup>14</sup> LCRA TSC Ex. 1, Application, Attachment 4 identifies these habitable structures as being located along Link Y18, used in modified Route MK 63. The 18 habitable structures impacted by Route MK 13 are an average distance of 2,553 feet from the centerline, and none of those appear to be located within the route's actual right-of-way.<sup>15</sup> Clearly, the Commission gave no consideration to the community values of avoiding habitable structures and cities because it selected the route that most negatively impacts the most number of habitable structures and the developed areas in Junction and Kerrville.

The Order deleted Finding of Fact 28 in the ALJs' Proposal for Decision. However, the Commission's ability to modify the ALJs' findings is limited by the Administrative Procedure Act,<sup>16</sup> and deleting or modifying such findings in violation of these statutory provisions constitutes arbitrary and capricious action by the agency.<sup>17</sup> There is no support in the Order for the Commission's decision to delete Finding of Fact 28. The Commission did not find that the ALJs did not properly apply applicable law, rules or policies. The Commission did not find that the ALJs relied on an incorrect prior administrative decision, nor did the Commission find a

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<sup>13</sup> Direct Testimony of Curtis D. Symank, P.E., LCRA TSC Ex. 7 at 31. ("If habitable structures exist within the proposed ROW of the final route approved by the Commission, people may be relocated or the line rerouted away from habitable structures depending on costs and Commission directives, in order to comply with the policy of prudent avoidance.")

<sup>14</sup> LCRA TSC Ex. 1, Application (Environmental Assessment, Table 6-35, p. 6-178, habitable structures 294-297 (two single family residences and two mobile homes)).

<sup>15</sup> LCRA TSC Ex. 1, Application (Environmental Assessment, Table 6-3, p. 6-101).

<sup>16</sup> Administrative Procedures Act, Tex. Gov't Code Ann. § 2001.058(e) (West 2008 & Supp. 2010). See, also P.U.C. Proc. R. 22.262(a)-(b).

<sup>17</sup> *Flores v. Employees Retirement System of Texas*, 74 S.W.3d 532, 538-545 (Tex. App.—Austin 2002, pet denied).



technical error in Finding of Fact 28 that warranted its deletion. Therefore, the deletion of Finding of Fact 28 constitutes arbitrary and capricious action on the part of the Commission.

The Commission's failure to appropriately weigh the community values of the entire study area is reflected in the disregard shown to the community values expressed by the elected representatives of over 48,000 residents of Kerr County and the City of Kerrville. No mention was made of the strong expressions of community values by the Mayor of Kerrville and the Kerr County Judge that these communities valued the I-10 corridor for both its aesthetic appearance and the potential economic development that was poised to occur along the Gateway to Kerrville. Rather than merely showing up at the Open Meetings and attempting to sway the Commission with emotional appeals, the communities of Kerrville and Kerr County intervened in the proceeding and actively participated in the hearing on the merits. The Commission's failure to give due consideration to the explicit statements of community values provided by these local governments is arbitrary and capricious.

The Commission's failure to consider the community value of reducing the effect of the line on habitable structures, particularly in developed areas, violates Movants' substantial rights because it is: (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

## POINT OF ERROR NO. 2

**The Commission erred in disregarding and violating the Commission's policy of prudent avoidance.<sup>18</sup>**

The Commission erred because it disregarded the Commission's policy of prudent avoidance, and therefore its Order is arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion. [A]n agency acts arbitrarily and capriciously when it: (1) fails to consider a factor the legislature required it to consider; (2) considers a legally irrelevant factor; or (3) weighs only relevant factors but reaches a completely unreasonable result.<sup>19</sup> The Commission has failed to take a hard look at the salient problems and has not genuinely engaged in reasoned decision-making.<sup>20</sup> The Order completely disregards the Commission's own policy of prudent avoidance and is arbitrary and capricious because modified Route MK 63 is an unreasonable result, considering that it does not comply with P.U.C. Subst. R. 25.101(a)(4).

Prudent avoidance is defined as "the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."<sup>21</sup> As noted by the PFD, prudent avoidance includes the consideration of reasonable and cost-effective routing adjustments to limit EMF exposure by minimizing the number of habitable structures in close proximity to the transmission line.<sup>22</sup> This policy is aimed at avoiding, where possible, the impact of transmission lines on places where humans gather, measured generally by habitable structures within a certain distance of the transmission line easement's centerline. Rather than selecting

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<sup>18</sup> Order at 2-3 (Jan. 24, 2011); FoFs 124, 125, 126, 159, 160; CoLs 9, 10.

<sup>19</sup> *City of El Paso*, 883 S.W.2d at 184.

<sup>20</sup> *Starr County v. Starr Industrial Services Inc.*, 584 S.W.2d 352, 356 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.) (quoting *Texas Medical Association v. Mathews*, 408 F. Supp. 303, 305 (W.D. Tex. 1976)).

<sup>21</sup> P.U.C. Subst. R. 25.101(a)(4).

<sup>22</sup> PFD at 73.

any number of proposed routes that would have impacted fewer habitable structures at a lower cost, the Commission erroneously chose modified Route MK 63, impacting 134 habitable structures at a cost of approximately \$360.5 million.<sup>23</sup>

Fifty-nine newly affected habitable structures are located in the City of Kerrville alone, and 17 of these habitable structures will have to be relocated. On no other routes would any habitable structures be within the proposed right-of-way, and on no other routes would this large a number of habitable structures be impacted. On no other routes would a business employing 41 people be surrounded on three sides, as close as 85 feet, by the transmission line. Only on routes using Links Y18 and Y19b do these circumstances occur. It is not necessary to use these links; with reasonable investments of money and effort the line could be located on other links, and this developed area could be avoided entirely. Instead, the Order turns the policy of prudent avoidance on its head, and selects a route that costs approximately \$100 million more than the preferred route in order to negatively impact over 100 more habitable structures than the preferred route.

Not only does modified Route MK 63 impact more habitable structures than almost all other routes, it impacts those structures in a more detrimental manner than other routes. The evidence in the record establishes that the line approaches habitable structures much more closely along I-10 and even that certain *structures must be condemned* if the route follows I-10. LCRA TSC witness Reid testified that “along IH-10 and near Kerrville, it became increasingly difficult to avoid populated areas directly along IH-10 and the IH-10 corridor because of the population density and presence of businesses and rural subdivision developments in the immediate area of Kerrville. *In fact, segments Y18 and Y19b have habitable structures within the ROW that could not be avoided.*”<sup>24</sup> It is evident that if modified Route MK 63 is constructed,

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<sup>23</sup> Order, FoFs 120, 124, 125 (Jan. 24, 2011).

<sup>24</sup> Direct Testimony of Rob R. Reid, LCRA TSC Ex. 9 at 19 (emphasis supplied).

some landowners will indeed lose their residences and the structures that are not removed or relocated will be much closer to the line than habitable structures would be along other routes.<sup>25</sup>

Additionally, the Commission erred because there is no evidence to support Findings of Fact 125 and 126. An agency's action is reversible if it is not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole.<sup>26</sup> If the findings of underlying fact in an order do not have reasonable support in the evidence adduced in the agency proceeding, that order is not supported by substantial evidence.<sup>27</sup> As demonstrated above, in light of the number of impacted habitable structures and the ability to avoid EMF exposures accompanying the proximity to these structures, there is no evidence to support the assertion that the decision to affect *more* habitable structures at a *higher cost* complies with the policy of prudent avoidance. To the contrary, all the evidence in the record proves that the selected route violates the policy by spending over \$100 million more than the cost of the Preferred Route (Route MK 13) to impact 87% more habitable structures in a much more severe manner. Therefore, there is no evidence in the record to support Findings of Fact 125 or 126.

The Commission's error in failing to comply with the Commission's policy of prudent avoidance violates Movants' substantial rights because it is: (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

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<sup>25</sup> Direct Testimony of Curtis D. Symank, P.E., LCRA TSC Ex. 7 at 31. ("If habitable structures exist within the proposed ROW of the final route approved by the Commission, people may be relocated or the line rerouted away from habitable structures depending on costs and Commission directives, in order to comply with the policy of prudent avoidance.")

<sup>26</sup> Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.174 (West 2008 & Supp. 2010).

<sup>27</sup> *Texas Health Facilities Commission v. Charter Medical-Dallas Inc.*, 665 S.W.2d 446, 452-453 (Tex. 1984).

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

### POINT OF ERROR NO. 3

**The Commission erred in materially rerouting Link Y11 after the closing of the evidentiary hearing without providing affected parties the opportunity to examine witnesses or present evidence on the impact of the rerouting.<sup>28</sup>**

The Commission erred because its rerouting of Link Y11 lacks the support of substantial evidence in the record, is based upon unlawful procedure, is in excess of the Commission's statutory authority and is arbitrary, capricious, and characterized by an abuse of discretion. There is no evidence in the record, when considering the reliable and probative evidence in the record as a whole, to support the rerouting of Link Y11.

If the evidence as a whole is such that reasonable minds could not have reached the same conclusion that the agency must have reached in order to justify its decision, the decision is not reasonably supported by substantial evidence.<sup>29</sup> Based on the record, no reasonable mind could have reached the conclusion that "Link Y11, when moved to the southern limit of noticed property owners, can be built safely and reliably at a reasonable cost above-ground"<sup>30</sup> because there is absolutely no evidence in the record to support that conclusion.

At the Open Meeting on January 20, 2011, the Commission, for the very first time, considered a materially different routing configuration of the proposed line through the City of Junction. The evidentiary hearing in this docket ended on November 2, 2010, and the record closed on that date.<sup>31</sup> Not until January 15, 2011, did the LCRA TSC personnel design a route

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<sup>28</sup> Order at 2-3 (Jan. 24, 2011); FoFs 110, 113, 115, 118a, 135, 159, 160; CoLs 9, 10.

<sup>29</sup> *Texas Health Facilities*, 665 S.W.2d at 452-453; *Wu v. City of San Antonio*, 216 S.W.3d 1, 5 (Tex. App.—San Antonio 2006, pet. denied).

<sup>30</sup> Order, FoF 118a (Jan. 24, 2011).

<sup>31</sup> Hearing on Merits Tr. at 1489, lines 4-5 (Nov. 2, 2010).

through Junction that was different from any routes previously proposed through the area. Not until January 19, 2011, were any parties apprised of the rerouting of this link, and only then were able to learn of the rerouting only if they happened to check the docket interchange on the Commission's website to discover a letter from LCRA TSC to the Commissioners, filed at 2:14 p.m. on January 19, 2011, describing the rerouting that was going to be considered by the Commission the following morning.<sup>32</sup>

The proposed links or segments contained in the Application that would pass through the City of Junction were identified as Links Y10b and Y11. The Commission was presented with essentially two alternatives for the routing of this line around the Kimble County Airport. Option One was to place the line underground for a portion of Link Y11. Option Two was to route the line to the north of the Kimble County Airport using Links b19b, b19c and b23a. At the Open Meeting on January 13, 2011, Mr. Bill Neiman of Clear View Alliance ("CVA") suggested, outside of the record, that landowners to the south of the airport might be willing to accept the line on their property.<sup>33</sup> LCRA TSC interpreted this statement and subsequent questions from the Commission as a directive to investigate a third option, one that would proceed south of the Kimble County Airport and avoid the necessity of constructing any portion of the line underground.

On January 19, 2011, LCRA TSC filed a letter with the Commission, in which it described an entirely new route for the line through the City of Junction.<sup>34</sup> As admitted by LCRA TSC in this letter, "[a]t the Open Meeting of January 13<sup>th</sup> [Clear View Alliance]

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<sup>32</sup> It is evident that even LCRA TSC felt uncomfortable about the lateness of its rerouting information, as it felt compelled to request a "good cause" exception to the Commission's rule that prohibits the filing of material within seven days of an open meeting. See, LCRA TSC letter dated January 19, 2011, (Interchange Item #3616), citing P.U.C. Proc. R. 22.71(j) ("LCRA TSC Letter").

<sup>33</sup> Open Meeting Tr. at 111, lines 14-19 (Jan. 13, 2011).

<sup>34</sup> See LCRA TSC Letter at 2. LCRA TSC admitted that the "new" route was not proposed in its original Application (p. 3), and that it did not propose an alternative such as the one described in the letter because of certain negative impacts.

suggested a routing alternative that would pass south of the Kimble County Airport and south of the North Llano River. . . . [O]n Saturday, January 15<sup>th</sup> LCRA TSC's engineers studied and photographed the area in question and designed a routing alternative . . ."<sup>35</sup> Until LCRA TSC's letter was filed with the Commission, no affected party was aware of this proposed rerouting of Link Y11 (except, perhaps, Clear View Alliance, who suggested the rerouting to LCRA TSC "sometime in December," well after the record closed on November 2, 2010),<sup>36</sup> and certainly no affected party had any opportunity to pose questions to LCRA TSC or to present any evidence to the Commission regarding the impact of this rerouting on property owners or on the City of Junction.

Had the rerouting of Link Y11 been subject to the appropriate treatment and examination, as with all the other proposed links, it would have been shown that there were miscalculations in measurements of existing obstructions, there were errors in the floodplain elevations, and there were miscalculations in the pertinent slopes. The rerouting of Link Y11 was considered to be so vastly different from the routes considered at the hearing that the City of Junction validly claimed surprise and sought to focus the Commission's attention on the routes that had been considered at the hearing. The City of Junction attempted to bring these matters to the attention of the Commission through a letter filed on January 20, 2011, which was the very first opportunity that it had to do so in light of the surprise presentation by LCRA TSC of this new route through its letter filing on January 19, 2011.<sup>37</sup> Rather than providing the parties an opportunity to develop the information about this new route, the Commission allowed unsworn

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<sup>35</sup> *Id.* at 2.

<sup>36</sup> Open Meeting Tr. at 47, lines 14-16 (Jan. 20, 2011).

<sup>37</sup> A copy of the letter filed by the City of Junction on January 20, 2011, is available on the Commission Interchange as Item # 3617.

statements at the Open Meeting, statements that clearly were taken into consideration by the Commission in its decision to approve the rerouting of Link Y11.

The Commission ultimately adopted the rerouting of Link Y11 through Finding of Facts 115, 118a, and 160 in its Order. Specifically, Finding of Fact 118a reads “Link Y11, when moved to the southern limit of noticed property owners, can be built safely and reliably at a reasonable cost above-ground.” However, there is no evidence in the record to support this finding of fact because the modification was proposed *after* the evidentiary record closed.<sup>38</sup> It is evident from the admission of LCRA TSC counsel Rodriguez that the substance of the Link Y11 modification was not considered at the evidentiary hearing,<sup>39</sup> therefore no parties were able to introduce evidence to either support or oppose such a modification.<sup>40</sup> There is no evidence in the record to support Findings of Fact 118a or 160,<sup>41</sup> because any support for these findings comes from information outside of the evidentiary record.<sup>42</sup>

The Order also errs in rerouting Link Y11 because evidence garnered in support for such rerouting was obtained during unlawful procedures. The Order bases the rerouting primarily upon a filing made by LCRA TSC between the two open meetings, after the record was closed.<sup>43</sup> The Order also relies upon representations made by various parties at the Commission’s meetings of January 13 and 20, 2011. The Commission heard what amounted to testimony from a number of parties during the open meeting, including CVA representative Bill Neiman and

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<sup>38</sup> LCRA TSC Letter at 3; Administrative Procedure Act, Tex. Gov’t Code Ann. § 2001.141(c) (West 2008 & Supp. 2010) (“Findings of fact may be based only on the evidence and on matters that are officially noticed.”).

<sup>39</sup> *Id.*

<sup>40</sup> Administrative Procedure Act, Tex. Gov’t Code Ann. § 2001.051(2) (West 2008 & Supp. 2010).

<sup>41</sup> P.U.C. Proc. R. 22.263(a)(3); Administrative Procedure Act, Tex. Gov’t Code Ann. § 2001.141(c) (West 2008 & Supp. 2010).

<sup>42</sup> LCRA TSC Letter at 3.

<sup>43</sup> LCRA TSC Letter at 3; Open Meeting Tr. at 62 (Jan. 13, 2011).



LCRA TSC counsel Fernando Rodriguez and engineer Curtis Symank.<sup>44</sup> The information offered by Mr. Neiman, Mr. Rodriguez, and Mr. Symank amounted to nothing more than either public comment or oral argument, but certainly was not evidence upon which any findings or conclusions could be based. Under the Commission's own procedural rules, "[p]ublic comment is not part of the evidentiary record of a contested case."<sup>45</sup> Therefore, the representations made at the open meetings cannot serve as an evidentiary bases for Findings of Fact 118a or 160, and these findings remain unsupported by substantial evidence.

The Commission's error in rerouting Link Y11 violates Movants' substantial rights because it is: (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

#### **POINT OF ERROR NO. 4**

**The Commission erred by adopting findings of fact that are not supported by substantial evidence, and give the Order an appearance of a pre-determined result.<sup>46</sup>**

The Commission erred by adopting findings of fact that are unsupported by substantial evidence, and because it changed findings of fact (from those proposed by the Proposal for Decision) without explanation. Agencies act arbitrarily and capriciously when they change

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<sup>44</sup> Open Meeting Tr. at 46, line 25 through 65, line 2 (Jan. 20, 2011). The Commission also appears to have relied upon "testimony" from Gavin Stener of the CVA group. Open Meeting Tr. at 156, line 11 through 159, line 8 (Jan. 13, 2011), ("And actually on the hills above Kimble County there was in 2005—it's not a matter of the record. No one has entered this into the record, but I would like to speak about it."). Commissioner Nelson also admitted that this information was not in the record. Open Meeting Tr. at 158 (Jan. 13, 2011).

<sup>45</sup> P.U.C. Proc. R. 22.221(e).

<sup>46</sup> Order at 2-3 (Jan. 24, 2011); FoFs 24, 25, 30, 40, 44, 52, 52a, 77, 79, 83, 100, 102, 121, 125, 126, 151, 159; CoLs 9, 10.

findings of fact and conclusions of law for unexplained reasons that give the appearance of arriving at a pre-determined result.<sup>47</sup> “A basic purpose of requiring findings of fact is to ensure that an agency’s decision comes after, not before, a careful consideration of the evidence. Agency conclusions should follow from its serious appraisal of the facts.”<sup>48</sup>

The courts focus on an agency’s rules in reviewing whether the agency appropriately changed an ALJ’s finding.<sup>49</sup> The Commission rules on this subject are very similar to the language of the Administrative Procedure Act, and likewise limit the ability of the Commission to change a finding of fact made by the Administrative Law Judge.<sup>50</sup> Therefore, this Commission must explain any modifications to the ALJs’ findings.

Several of the findings of fact contained in the Order lack explanation for deviation from the PFD, and give the Order the appearance of a pre-determined result. Finding of Fact 24 states that paralleling roadways avoids much of the Hill Country.<sup>51</sup> In fact, the evidence in the record shows that the entire eastern portion of the study area, including the area of the I-10 corridor, is located within the Hill Country.<sup>52</sup> Therefore, there is no evidence in the record to support this finding.

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<sup>47</sup> *Flores*, 74 S.W.3d at 538-545.

<sup>48</sup> *Gulf States Utilities Company v. Coalition of Cities for Affordable Utility Rates*, 883 S.W.2d 739, 750 (Tex. App.—Austin 1994), *rev’d on other grounds*, 947 S.W.2d 887, 891-92 (Tex.1997).

<sup>49</sup> *Larimore v. Employee Retirement System of Texas*, 208 S.W.3d 511, 516 (Tex. App.—Austin 2006, *pet. denied*).

<sup>50</sup> P.U.C. Proc. R. 22.262(a)-(b).

<sup>51</sup> Order, FoF 24 (Jan. 24, 2011).

<sup>52</sup> “The topography of the western portion of the study area is characterized by rather flat plains and low, rolling hills, but the eastern portion is located in the Hill Country of the Edwards Plateau, an area of the state noted for its scenic beauty.” LCRA TSC Ex. 1, Application (Environmental Assessment, § 2.11 at 2-71).

Finding of Fact 52 proposed by the PFD and adopted in the Order has no basis in the record. As the PFD notes, it is admittedly an inference drawn by the Judges without the ability to cite any record evidence as its foundation:<sup>53</sup>

52. I-10 is a means of transportation across the state, where aesthetically pleasing views are incidental. Travelers and anyone in the proximity of I-10 in the Project area will see commercial development including gas stations, convenience stores, chain and fast-food restaurants, strip malls, traffic – including heavy tractor-trailers, car lots, power lines, roadways – including feeder roads, and all of the development associated with small towns, larger municipalities, and cities like San Antonio. It is far more likely that a 345-kV line will be lost in the visual foreground along I-10 than if it were run along a central or northern route through what is undoubtedly the aesthetically pleasing and relatively undeveloped Texas Hill Country.<sup>54</sup>

This Finding of Fact 52, stating that “aesthetically pleasing views are incidental” along I-10 is also unsupported by any evidence in the record.<sup>55</sup> To the contrary, the record evidence is that I-10 is one of the most scenic drives in Texas.<sup>56</sup> There is also substantial evidence in the record that routing the proposed transmission line along I-10 will be potentially the most aesthetically disturbing route.<sup>57</sup>

This theme follows throughout the Order. The Commission improperly deleted Findings of Fact 27-29, 31, 58, 59, 111, 112, 130, and 139; added new Findings of Fact 31a, 52a, 118a, 159-161, and modified Findings of Fact 26, 30, 33, 48, 49, 83, 92-94, 100, 108, 115, 120, 122-125, and 144 and Conclusion of Law 10, all without outlining sufficient explanation for the

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<sup>53</sup> PFD at 38.

<sup>54</sup> PFD at 98; Order, FoF 52 (Jan. 24, 2011).

<sup>55</sup> Order, FoF 52 (Jan. 24, 2011).

<sup>56</sup> Two of the best Scenic Overlooks and Rest Areas in Texas are located along I-10 in the vicinity of Links Y16 and Y20 and/or c1b. LCRA TSC Ex. 1, Application (Environmental Assessment § 2.11 at 2-73); Tr. at 245-247 (Oct. 25, 2010).

<sup>57</sup> Rebuttal Testimony of Rob R. Reid, LCRA TSC Ex. 20 at 10.

deviations from the PFD. Therefore, the Order violates the Commission's rules and the Administrative Procedure Act and constitutes agency action that is arbitrary and capricious.

The Commission's willful disregard of the evidence in the record offered by the City of Kerrville, Kerr County, Kerrville Public Utility Board, and Cecil Atkission that the routing of the line down I-10 through Kerr County and Kerrville would have significant detrimental effects on the high aesthetic quality of the area (even along I-10), on the ability of the City and County to attract high-quality economic development along that corridor, and the hugely negative impact on a major business and employer in the area, indicates that the decision to route the project along I-10 had been made regardless of the facts that were presented to the Administrative Law Judge and the Commission itself. While the Commission has instructed local governmental entities in the past to actively participate in CCN CREZ proceedings rather than merely adopting resolutions, in this docket it has arbitrarily disregarded the evidence presented by the local governmental entities on behalf of their citizens and on behalf of the larger public interest, as expressed through master plans adopted by the City and economic development tools in place by the Kerrville Public Utility Board and the County Commissioners of Kerr County. The impact on a multi-million dollar investment (Cecil Atkission Motors) was completely, and arbitrarily, disregarded.

The findings give the Order the appearance of being "results driven" to use I-10 as much as possible, without regard to the record evidence. The Commission's end-first approach violates Movants' substantial rights because the result is: (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary

or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

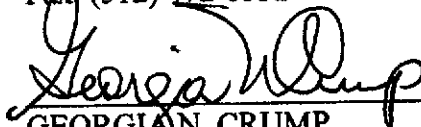
### III. CONCLUSION

The Commission erred by ordering the construction of modified Route MK 63. The Order violates PURA, the APA and the Commission's Substantive and Procedural Rules because it is: (1) in violation of a constitutional or statutory provision; (2) in excess of the Commission's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully request that the Commission grant Rehearing and Order LCRA TSC to construct the proposed McCamey D to Kendall transmission line along LCRA's preferred Route MK 13.

Respectfully submitted,

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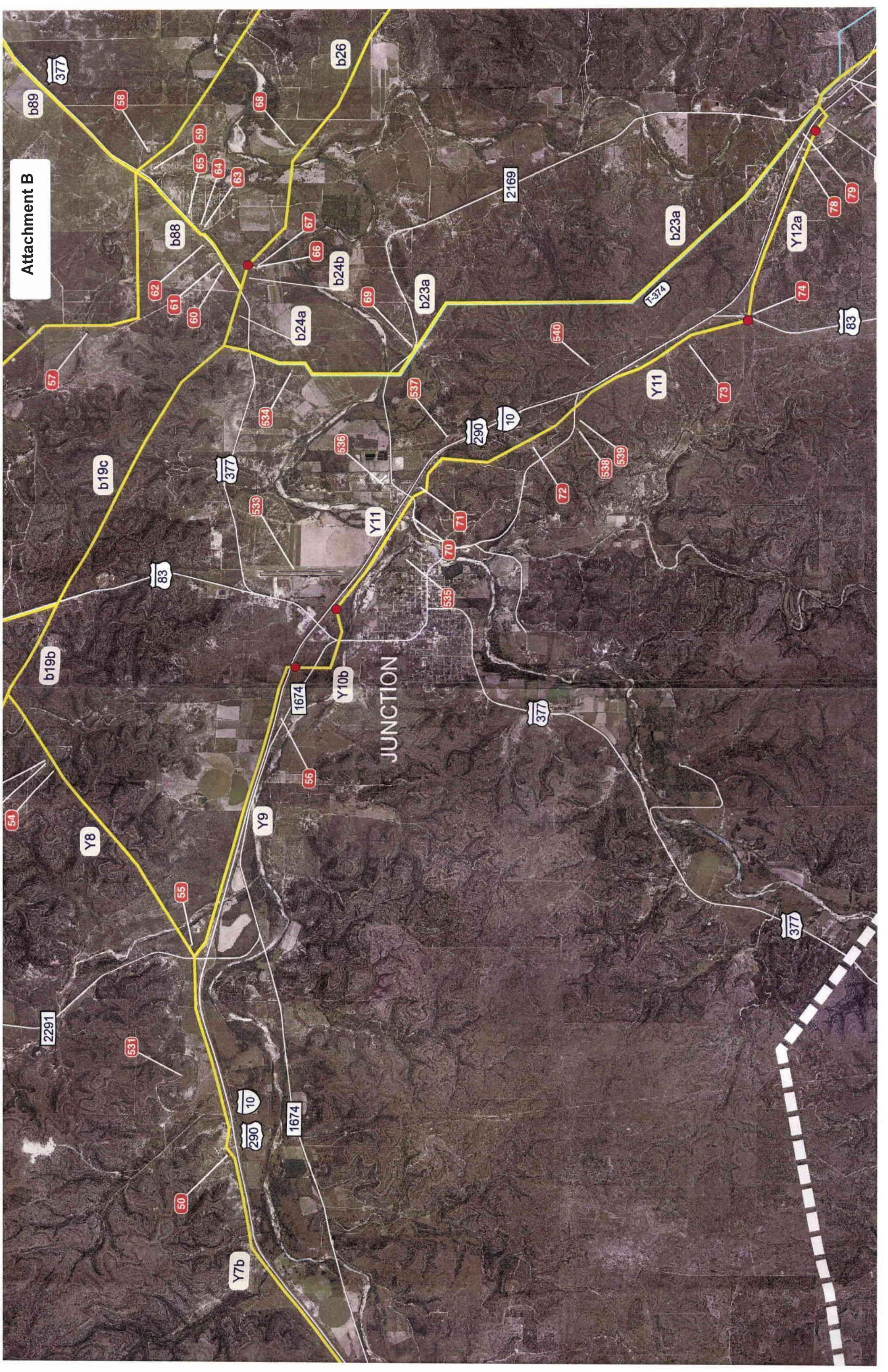
**CERTIFICATE OF SERVICE**

I, Georgia N. Crump, certify that a true and correct copy of this document was served on all parties of record in this proceeding on February 16, 2011 in the following manner: first class mail.

  
GEORGIA N. CRUMP



Attachment B





TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
AUSTIN, TEXAS

IN THE MATTER OF THE OPEN MEETING)  
OF THURSDAY, JANUARY 13, 2011 )

BE IT REMEMBERED THAT AT approximately 9:32 a.m., on Thursday, the 13th day of January 2011, the above-entitled matter came on for hearing at the Public Utility Commission of Texas, 1701 North Congress Avenue, William B. Travis Building, Austin, Texas, Commissioners' Hearing Room, before BARRY T. SMITHERMAN, CHAIRMAN, DONNA L. NELSON, COMMISSIONER and KENNETH W. ANDERSON, JR., COMMISSIONER; and the following proceedings were reported by Lou Ray and William C. Beardmore, Certified Shorthand Reporters.



## OPEN MEETING - ITEM 11 1/13/2011

1 CHAIRMAN SMITHERMAN: Okay. Do you need a  
2 motion?

3 MR. JOURNEAY: Need a motion to approve  
4 that, sir.

5 CHAIRMAN SMITHERMAN: All right. The  
6 Chair will entertain a motion to approve, with those  
7 adjustments and amendments.

8 COMM. NELSON: So move.

9 COMM. ANDERSON: Second.

10 CHAIRMAN SMITHERMAN: Thank you.

11 AGENDA ITEM NO. 11

12 DOCKET NO. 38354; SOAH DOCKET NO. 473-10-5546 -  
13 APPLICATION OF LCRA TRANSMISSION SERVICES  
14 CORPORATION TO AMEND ITS CERTIFICATE OF  
15 CONVENIENCE AND NECESSITY FOR THE PROPOSED  
16 MCCAMEY D TO KENDALL TO GILLESPIE 345-KV  
17 CREZ TRANSMISSION LINE IN SCHLEICHER,  
18 SUTTON, MENARD, KIMBLE, MASON, GILLESPIE,  
19 KERR, AND KENDALL COUNTIES

20 CHAIRMAN SMITHERMAN: Now let's go to the  
21 item of interest for everyone in this room. This is  
22 Item No. 11, PUC Docket 38354. The way we have  
23 conducted these CREZ proceedings in the past I would  
24 suggest is a good model for continuing today, I know for  
25 many of you who don't come to the PUC, this is the first  
time you've been here, the first time you will have seen  
us talk and deliberate these matters. For us I think  
it's the 22nd or 23rd CCN that we've been working on

## OPEN MEETING - ITEM 11 1/13/2011

1 since the beginning of 2010.

2 Because of our rules, we do not have the  
3 ability to talk among ourselves outside of an Open  
4 Meeting, so this is the first time that we will have  
5 discussed this issue. So you're going to see at some  
6 times a free-flowing discussion. You may wonder: Why  
7 didn't they work that all out in the back room? That's  
8 not the way we do business here, because if two of us  
9 talk to each other outside of an Open Meeting, that's a  
10 violation of our Open Meetings laws.

11 So we'll be discussing our impressions,  
12 our thoughts, our suggestions, as we go forward. We  
13 have the schedule for today and for our next Open  
14 Meeting. We have a statutory deadline of January the  
15 24th. And I think our interpretation of the statute is,  
16 if we do not pick a route by that time, the utility gets  
17 to pick the one they want.

18 COMM. ANDERSON: That's right.

19 CHAIRMAN SMITHERMAN: Okay. Which is  
20 probably not in the best interest of most of the people  
21 in this room. I did file a memo. There are copies of  
22 it on the table here. Filing a memo is a technique that  
23 we use in order to communicate with each other just in  
24 advance of the Open Meeting, to sort of highlight the  
25 issues that we're interested in and the questions that

## OPEN MEETING - ITEM 11 1/13/2011

1 we have and maybe some of our conclusions that we have  
2 made in order to try to shape the discussion in a  
3 particular direction. That's the only effect that it  
4 has.

5 Historically in these cases, we've asked  
6 public officials to come up and speak first. Then we've  
7 asked interested parties if they want to say something.  
8 I would encourage you to have one or two people speak on  
9 behalf of your group. We are going to be here all day  
10 long, but it doesn't really make sense for everyone from  
11 a particular group to speak, particularly if they're  
12 repeating what someone has already said.

13 And let's be clear, this is not evidence.  
14 The record is closed in this case. I know there were  
15 some expressions from some folks that were concerned  
16 that people showing up today that were not parties would  
17 somehow influence our decisionmaking. We're looking at  
18 the record. We've got maps and stacks of documents up  
19 here, which is what we will rely upon. There is an  
20 opportunity for you to express your point of view, but  
21 it is technically not part of the record.

22 COMM. NELSON: Can I just add one other  
23 thing?

24 CHAIRMAN SMITHERMAN: Yes.

25 COMM. NELSON: And before we get to these

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1 opening meetings, both our staff and all of us  
2 Commissioners have spend countless hours going through  
3 all the evidence and reading exceptions and reading  
4 briefs, and sometimes that leads us to some tentative  
5 conclusions, as it did the Chairman. And so what we  
6 would ask you to do is sort of just reiterate in very  
7 brief form what you filed previously or the testimony  
8 that you filed.

9 CHAIRMAN SMITHERMAN: Ken, any opening  
10 remarks?

11 COMM. ANDERSON: Only I look forward to  
12 discussing this. And I wanted to just add that if, in  
13 fact, you are a party or a member of a group that is a  
14 party, that we have read all your filings, so there's no  
15 need to repeat what you have already put in writing. As  
16 late as midnight last night, I was still reading the  
17 last of the material, and rereading in some cases. So  
18 there's no need to repeat what you said.

19 If, however, there is a unique  
20 circumstance, then feel free. Now, that's my personal  
21 opinion. Obviously, we allow folks the freedom to say  
22 what they want generally, as long as they keep it  
23 concise.

24 CHAIRMAN SMITHERMAN: And generally we  
25 like to hear from individuals rather than from their

## OPEN MEETING - ITEM 11 1/13/2011

1 attorneys. I mean, we're all three attorneys, so this  
2 not to disparage attorneys. But the attorneys have had  
3 their opportunity repeatedly over at SOAH.

4 Now, if you're an attorney representing a  
5 party and your party is not here, that's a difference.  
6 The other thing, when you do come up, tell us whether  
7 you're a party in the case or not. I know my staff has  
8 got a listing of all of the parties. We're going to try  
9 to quickly, on the computer, pull it up and make sure  
10 that we know who is a party and who is not.

11 So with that, Katherine, would you lay out  
12 the procedural history on this for us, please.

13 MS. GROSS: This is Docket 38354. This is  
14 the application of LCRA to amend its Certificate of  
15 Convenience and Necessity for the proposed McCamey D to  
16 Kendall to Gillespie 345 CREZ line. Before the  
17 Commission today is a proposal for decision in which the  
18 SOAH Administrative Law Judge recommended that Staff's  
19 MK15 modified be approved for the McCamey D to Kendall  
20 portion of the line.

21 Subsequent to the filing of this  
22 application, the Commission determined that the Kendall  
23 to Gillespie portion of the transmission line would be  
24 replaced with a cost effective alternative; so,  
25 therefore, the ALJ's proposal for decision does not

## OPEN MEETING - ITEM 11 1/13/2011

1 recommend a routing option for the Kendall to Gillespie  
2 substations. And additionally, as you mentioned, you  
3 filed a memo in this docket and also Commissioner Nelson  
4 has filed a memo.

5 CHAIRMAN SMITHERMAN: I think the only  
6 thing I would add is, this project was designated as a  
7 priority project --

8 MS. GROSS: That's correct.

9 CHAIRMAN SMITHERMAN: -- early on. And we  
10 did that because of the need to build this project to  
11 relieve current congestion on the ERCOT grid as well as  
12 to move wind energy that's already been developed in the  
13 McCamey area. And then I think it's important to note  
14 that this case was actually filed later than the  
15 original schedule. I know Ferdie is over there. LCRA  
16 went back to expand the study area to encompass an area  
17 about the size of Connecticut.

18 Ferdie, approximately that?

19 MR. RODRIGUEZ: That's approximately.

20 CHAIRMAN SMITHERMAN: Certainly bigger  
21 than Rhode Island.

22 (Laughter)

23 So that's sort of where we are today. I  
24 filed a memo; Commissioner Nelson filed a memo. And, of  
25 course, we have the PFD in front of us.

## OPEN MEETING - ITEM 11 1/13/2011

1                   So unless you-all have other opening  
2 remarks, let's ask some of our elected officials if they  
3 would like to speak. I understand that the county judge  
4 from Kimble County is here, the county judge from  
5 Gillespie County. We try to start at the top of the  
6 food chain and work our way down. Any other judges who  
7 would like to speak, just sort of raise your hand and  
8 call out.

9                   So who wants to go first?

10                  Yes, sir. Come on down.

11                  Now, when you come up, have a seat, pull  
12 the microphone close. Tell us your name so the court  
13 reporter can get it down accurately.

14                  Thank you for coming.

15                  JUDGE TINLEY: Thank you, Mr. Chairman.  
16 My name is Pat Tinley. I am the constitutional county  
17 judge of Kerr County, and I'm here representing the  
18 interest of the citizens in Kerr County. And I  
19 appreciate the opportunity and the privilege which the  
20 Commission has given some of us to tell you what's on  
21 our mind about this situation.

22                  The proposal for decision that has been  
23 tendered to the Commission, if adopted, which selects  
24 one of the so-called I-10 routes, would have the  
25 following results: No. 1, it would expose the negative

## OPEN MEETING - ITEM 11 1/13/2011

1 aesthetics of the towers and the transmission lines to  
2 the greatest number of people, by virtue of the traffic  
3 on I-10. Some of the visitors to our Hill Country -- in  
4 fact, most of them -- travel I-10. That's their  
5 exposure of the vista that they see of our beautiful  
6 Hill Country.

7               That decision would also impact the  
8 greatest number of habitable structures, even requiring,  
9 if that line comes through Kerrville, the removal of  
10 several. In addition, that situation would eliminate or  
11 severely negatively impact some of the commercial and  
12 development property in Kerrville and Kerr County. And  
13 if it comes through Kerrville properly, up to 550 -- 500  
14 to \$550 million. It would require the construction of  
15 the longest and one of the higher cost lines.

16               Now, I submit that the process that we  
17 have underway today and the criteria which the  
18 Commission has prescribed to be followed in selecting  
19 this route are intended to achieve exactly the opposite  
20 of what I just indicated.

21               In its proposal for decision, the  
22 Administrative Law Judge necessarily, after reaching a  
23 conclusion which indicated the I-10 routes or one of the  
24 I-10 routes, necessarily had to negate the propriety of  
25 other routes, particularly the preferred route of LCRA



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1 TSC. That route, of course, is a route which would be  
2 one of the shortest, lowest cost, impact the fewest  
3 habitable structures and expose the fewest number of  
4 people to the negative aesthetics. That route was  
5 dismissed by the ALJ, generally on two bases. One was  
6 environmental concerns, and the other was community  
7 values.

8 With regard to the environmental concerns,  
9 PBS&J, the contractor who has expertise in performing  
10 environmental assessments, actually ranked the routes as  
11 proposed and ranked the preferred route of LCRA as first  
12 ecologically. They did so after having all the data  
13 available to them and having studied that data under  
14 proper legal theories and using the appropriate  
15 scientific criteria. Yet, the proposal elects to go  
16 with some evidence which was adduced from Parks &  
17 Wildlife folks, which was admittedly contradicted and  
18 conflicted in the record and which was admittedly based  
19 on lack of information for the conclusions given.

20 Community values: The CVA suggests that  
21 they should be the, quote, "decider," as it were, of  
22 community values of the Hill Country, because it had the  
23 greatest number of individual intervenors, albeit every  
24 single one of them with a personal interest, and that  
25 their designation of community values was that this line

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1 should be along I-10. Along I-10, of course, should not  
2 impact anybody with CVA. So based upon their  
3 methodology, it appears that the numbers of people who  
4 assert community values should be the determining  
5 factor.

6 Now, the citizens of Kerrville and Kerr  
7 County selected a more efficient model for this process.  
8 The interest of all the 47,250 citizens of Kerrville and  
9 Kerr County were represented by their elected officials  
10 who intervened on their behalf. And after we  
11 intervened, a public meeting was held, well-attended.  
12 And I can assure you that loud and clear the community  
13 values of those 47,000-plus represented were that the  
14 line should be located not adjacent to or along I-10  
15 but, rather, somewhere else.

16 Now, if we're going by numbers, I think  
17 it's a no-brainer on community values. The population  
18 of Kerrville and Kerr County -- or Kerr County generally  
19 is 47,250. The four other counties involved have a  
20 combined population of only 72 percent of that. The  
21 fact that we chose a different model to represent our  
22 citizens for efficiency should not be held against us.

23 One could come to the conclusion that the  
24 Administrative Law Judge was overwhelmed by the noise  
25 from all of the intervenors to the north who had the

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1 NIMBY intervenors and made a decision to go with the  
2 southern routes because of that noise, and then  
3 proceeded to try and find a way to justify it.

4           The LCRA folks, when they filed their  
5 routes, did so only after extensive study, numerous open  
6 meetings, talking with citizens, evaluation on the  
7 ground, the topography, total knowledge of all of the  
8 criteria and conditions. And most of all, LCRA has no  
9 dog in this fight. It's been designated to do the line.  
10 They are not interested. They don't own any of the  
11 dirt.

12           The LCRA, based upon all these things,  
13 designated its preferred route. Now, you folks have got  
14 a tough decision to make, and I know there's a lot of  
15 emotion involved in it. But I have every confidence  
16 that you will look at the record before you, the  
17 credible evidence in that record. And after considering  
18 and weighing that credible evidence in accordance with  
19 the criteria which you have prescribed, make the right  
20 decision. And I believe that right decision will be and  
21 should be, based upon that, is to trust the judgment of  
22 the only true disinterested party and the one who had  
23 the most complete knowledge and information concerning  
24 all the aspects, and that's LCRA TSC, and designate  
25 their preferred route.

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1 I thank you for your time. Do up have any  
2 questions?

3 CHAIRMAN SMITHERMAN: Judge, I've got a  
4 couple of questions and then a couple of observations.  
5 And thanks again for coming.

6 With regard to the ALJ's -- you know,  
7 there were two of them involved, Wendy Harvel and Travis  
8 Vickery. And I guess I would just say, based upon my  
9 almost seven years here, I've found particularly the two  
10 of them are not easily cowed. We don't always follow  
11 their recommendations. But in my memo, I particularly  
12 reference them, because at least I've found their work  
13 to be good in my opinion.

14 As I went back through the record -- and  
15 we all have spend a lot of time over the holidays and  
16 I'm looking at Volume 1 of the environmental  
17 assessment -- a couple of things struck me as  
18 interesting and one of the reasons that led me in the  
19 directions of the PFD.

20 When you look at the comments from the  
21 various open houses -- and in particular I'm going to  
22 reference you to the Kerrville open house -- the use of  
23 parallel or other existing compatible right-of-way was  
24 the highest ranked item. So at least those folks --  
25 admittedly it's not all your constituents -- but those

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1 folks who showed up seemed to express that that was the  
2 most important.

3           And it's not a numbers game, but I think  
4 that's one indication of where the community is. And  
5 you know them better than me -- you live and work there,  
6 and they elected you -- but that's in the record. The  
7 other thing that's in the record -- and this is in  
8 Section 6 -- and I don't know how this was expressed,  
9 but some of the state representatives and elected  
10 officials expressed that we should go down IH-10, that  
11 we should use existing right-of-way and state highway  
12 right-of-way and a number of other -- so given those,  
13 what would your response be to that?

14           JUDGE TINLEY: Mr. Chairman, my response  
15 would be that there's a considerable difference between  
16 rights-of-way for aerial structures and rights-of-way  
17 for highways. Your highway and roadway rights-of-way  
18 are essentially two-dimensional rights-of-way. And when  
19 you add that third dimension, I don't think you can say  
20 there's not significant additional scarring that takes  
21 place.

22           And, in fact, if you look at some of the  
23 I-10 corridor, TxDOT has done a wonderful job of  
24 beautifying a lot of those areas along I-10. They've  
25 done so in many areas of the state, not just out where

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1 we are. So, actually, I-10 is a beautiful drive. But  
2 when you add that third dimension, I think it does  
3 something much, much more significant. And it's for  
4 that reason -- in our resolution, for example, by the  
5 Commissioners Court, which is on file in the record, we  
6 specifically said particularly to follow particularly  
7 those rights-of-way upon which there are existing aerial  
8 structures, because of that very reason.

9 CHAIRMAN SMITHERMAN: You may not want to  
10 answer this, but as between the preferred route that  
11 loops north of I-10 and Kerrville following, for a  
12 portion of it, the Lone Star Genco line, the private  
13 line, or the line that continues down I-10 all the way  
14 to Comfort, which of those do you prefer?

15 JUDGE TINLEY: Are you talking about the  
16 preferred route?

17 CHAIRMAN SMITHERMAN: I'm talking about  
18 just for this southeastern segment around Kerrville --  
19 not the preferred route, the PFD route, the one the  
20 Judge supported --

21 JUDGE TINLEY: Well, obviously, the --

22 CHAIRMAN SMITHERMAN: -- versus the I-10  
23 route which was the one that at least in part of their  
24 Parks & Wildlife talked about, and the Judge talked  
25 about as well.

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1 JUDGE TINLEY: Well, as between those two,  
2 I think my testimony is already in the record. And the  
3 route which parallels the private line through there  
4 north of Kerrville that goes on down to Comfort would be  
5 much preferable than the one which comes through  
6 Kerrville, as it were, the most southern route.

7 CHAIRMAN SMITHERMAN: Any other questions  
8 of the Judge?

9 Ken?

10 COMM. ANDERSON: If we were, for whatever  
11 reason, to ultimately pick the I-10 route -- I-10 route  
12 through Kerrville -- I hesitate to call it a proposal --  
13 an idea that LCRA made in their replies was that one  
14 could span I-10, go south for a brief distance that went  
15 through Lowe's parking lot, or over a Lowe's parking lot  
16 and -- I don't want to call it a motel, but a -- like  
17 a --

18 JUDGE TINLEY: There is a Holiday Inn  
19 there.

20 COMM. ANDERSON: A Holiday Inn -- Holiday  
21 Inn at a parking lot, and then after passing the parts  
22 of the north side that are a problem for a lot of the  
23 folks, then would cross back over and proceed on. And,  
24 of course, the Judges recommended I believe monopolies  
25 through there, and LCRA also mentioned it again in their

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1 reply to the exceptions, that they had various ways to  
2 in that area perhaps reduce the height, make other  
3 adjustments. Is that something that -- understanding  
4 that you object to it going through -- that would in  
5 your opinion mitigate I think some of your concerns?

6           Because at least I've been in areas where  
7 power lines go right over large parking lots and it --  
8 you know, my folks live in an area that's full of high  
9 power transmission lines that cross over, you know,  
10 strip malls and parking, and it doesn't seem to --  
11 that's not evidence, but it doesn't seem to adversely  
12 affect economic growth in that usage. Residential is  
13 one thing, but some of the commercial, it doesn't seem  
14 to be as adversely affected.

15           JUDGE TINLEY: Commissioner, I'm not sure  
16 you can limit that concept solely to crossing a couple  
17 of parking lots. You've got to get back across 16 and  
18 then go north to get on the north side of I-10.

19           COMM. ANDERSON: It would require a  
20 crossing south and crossing back north. You're right.

21           JUDGE TINLEY: And in doing so -- and I  
22 suspect our Kerrville mayor, David Wampler, will  
23 possibly speak to that -- that's one of the most prime  
24 development areas. And, in addition, we've got a number  
25 of assisted living facilities in that particular area or



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1 just adjacent to this very prime development area, and I  
2 would have serious concerns about that aspect. If it  
3 were all parking lots, yes, that's another issue. But,  
4 unfortunately, it's not on the ground.

5 CHAIRMAN SMITHERMAN: Well, thank you,  
6 Judge.

7 JUDGE TINLEY: Thank you.

8 CHAIRMAN SMITHERMAN: Whose next? Let's  
9 stay with the judges for now.

10 Yes, sir.

11 MR. LLOYD: Commissioners, while the Judge  
12 is coming up, Rep. Hilderbran -- I was passed a note --  
13 he expresses his disappointment that he couldn't be here  
14 today. He's occupied with other stuff at the Capitol,  
15 and he wanted everyone to know and you-all to know that  
16 Isaac Alvarado from his staff is here and will be  
17 listening. He doesn't wish to speak but will be here  
18 listening to the proceedings.

19 CHAIRMAN SMITHERMAN: Okay. Thank you.

20 Yes, sir.

21 JUDGE STROEHER: Thank you, Mr. Chairman.  
22 Commissioners. My name is Mark Stroehrer, and I'm the  
23 Gillespie County Judge. I appreciate the opportunity to  
24 make a few comments to you this morning. Before I do  
25 that, I would like to introduce -- we also have two of

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1 our county commissioners with me this morning,  
2 Commissioner Donnie Schuch and Commissioner Billy  
3 Roeder. Also, as you're aware, Gillespie County has  
4 participated jointly in this proceeding with the City of  
5 Fredericksburg. And representing the City of  
6 Fredericksburg, we have with us Councilman Graham  
7 Pearson. And I don't -- well, they are back there.

8           Since this case has generated a little bit  
9 of interest, I didn't know whether they would be able to  
10 get in the room or not, but we do appreciate them being  
11 here with us today as well. Unless you have any  
12 questions after a while -- I will be the only one  
13 speaking for our group this morning, in the interest of  
14 time. We very much appreciate your efforts in this  
15 matter.

16           Gillespie County and the City of  
17 Fredericksburg have been actively involved throughout  
18 this process since it began almost two years ago. Last  
19 summer both of our entities passed resolutions  
20 supporting use of the I-10 corridor through Gillespie  
21 County. We have fully participated in the process and  
22 have advocated positions consistent with those  
23 resolutions.

24           Additionally, I presented testimony on  
25 behalf of the county and city, urging protection of the

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1 Hill Country, not just for our residents but for the  
2 many people who visit the area. Many of our  
3 constituents have also intervened and are parties in  
4 this docket. We've have been respectful of the process  
5 and have tried very hard to play by the rules that were  
6 set out for this process.

7 We retained experienced PUC counsel in  
8 this matter to help us navigate through this case. Our  
9 positions have been briefed, and we rely on that  
10 participation in the process here. We fully recognize  
11 and appreciate that you have some difficult decisions to  
12 make.

13 We want to thank you for your thoughtful  
14 consideration of all the material that is in the record  
15 of this docket. Thank you for your time this morning.  
16 And that concludes my comments, if you have any  
17 questions.

18 COMM. NELSON: Well, I just want to say  
19 that I found that the analysis that y'all did on the  
20 habitable structures in the area on I-10 that runs north  
21 of Kerrville, I thought that was very helpful, because  
22 you did an analysis of what they were, whether they were  
23 single-family residents, mobile homes, commercial  
24 properties.

25 So I don't know that this is the time to

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1 discuss it, Mr. Chairman, but at some point I would like  
2 to have a discussion about -- because whether you look  
3 at the number of habitable structures that is in the  
4 record, I think it's higher -- you know, we typically  
5 care more about residential structures, and mobile homes  
6 are still residential structures, but they can be moved  
7 easier than a house with a foundation, and they may not  
8 need to be condemned.

9                   So I just wanted to commend you for that.  
10 It was helpful.

11                   JUDGE STROEHER: Thank you. I believe the  
12 commendation goes to our attorney, Ms. Webking, on that.

13                   COMM. NELSON: Yes.

14                   CHAIRMAN SMITHERMAN: Yes, we've heard of  
15 her.

16                   COMM. NELSON: Yes.

17                   (Laughter)

18                   JUDGE STROEHER: I thought you might be  
19 familiar with her.

20                   CHAIRMAN SMITHERMAN: You know, just to be  
21 consistent with my questions of the former judge, I also  
22 looked at the comments from the Fredericksburg open  
23 house, and it was a well-attended open house. And  
24 again, this is not a numbers game. But running the line  
25 down I-10 was the preferred route, and it was mentioned

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1 113 times, so is was sort of overwhelmingly favored.

2 Now, that's understandable, because if you  
3 live up in that neck of the woods, you prefer it to be  
4 down along I-10 rather than along what I call the P  
5 routes, which I don't think is the right way to go, and  
6 I've said that in my memo that I filed yesterday  
7 afternoon.

8 Do you have an opinion as between the  
9 route recommended by the Judge, the PFD route, which  
10 follows through Tierra Linda and then more or less the  
11 private Genco, or the I-10 route, the route that goes  
12 all the way down I-10 to Comfort?

13 JUDGE STROEHER: Well, the Commissioners  
14 Court position, along with the City of Fredericksburg  
15 position, has been all along, we were advocating the  
16 I-10 route, even though part of it does go through  
17 Gillespie County. We were advocating that over any of  
18 the other routes. We feel like the PFD route through  
19 Tierra Linda would not be at all helpful for those -- we  
20 just can't imagine going through that large residential  
21 subdivision as opposed to I-10 corridor. People driving  
22 along the I-10 route are used to seeing commercial or  
23 industrial uses, along with utility uses, and I think  
24 priority should be given to the residential subdivision  
25 of Tierra Linda as opposed to the I-10. So definitely

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1 our position would be going straight down I-10.

2 COMM. NELSON: And at some point I'm going  
3 to have questions of LCRA, too --

4 CHAIRMAN SMITHERMAN: Okay.

5 COMM. NELSON: -- when we start discussing  
6 this.

7 CHAIRMAN SMITHERMAN: Okay. Great.

8 COMM. NELSON: I guess since you know that  
9 area, would you expect that as the area north of I-10  
10 continues to evolve from an economic development  
11 standpoint, that some of those residential structures  
12 would be replaced with commercial structures as the land  
13 become more valuable?

14 JUDGE STROEHER: I'm not sure which area  
15 you're speaking of. But in the Tierra Linda  
16 subdivision, I would not expect any of that to turn  
17 commercial. I would expect --

18 COMM. NELSON: I'm talking about the area  
19 just north of I-10, the route that you prefer.

20 JUDGE STROEHER: I really can't answer  
21 that for you.

22 COMM. NELSON: Okay. That's okay. Thank  
23 you.

24 JUDGE STROEHER: I don't have any evidence  
25 to speak to.

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1 CHAIRMAN SMITHERMAN: Questions?

2 Great. Thank you for coming. Appreciate  
3 you-all coming.

4 Who else do we have? I thought we had at  
5 least one more county judge here.

6 Yes, sir?

7 JUDGE BEARDEN: I think you may have two.

8 CHAIRMAN SMITHERMAN: All right. We can  
9 do two.

10 JUDGE BEARDEN: I'm Jerry Bearden, Mason  
11 County Judge. I believe I've met with you before. I  
12 just have a few short comments to make to you. I want  
13 to thank you for the diligent work that you have  
14 presented to the public on this transmission line. I  
15 realize that the Administrative Law Judges presented to  
16 you what we presented in our intervention process, our  
17 concerns with environmental impacts, our concerns with  
18 the right-of-ways that are incompatible.

19 I do have to digress a little bit from  
20 Judge Tinley, because Mason County, we're the smallest  
21 in population. I realize we don't have 47,000 people.  
22 We only have 3,800, but we're pretty well 100 percent  
23 behind the Administrative Law Judges' selections of the  
24 routes. And the memo that Chairman Smitherman  
25 presented, again we want to thank you for the hard work

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1 that you have done.

2 Do you have any questions?

3 COMM. NELSON: No. Thank you for coming.

4 CHAIRMAN SMITHERMAN: Judge, let me ask,  
5 because it's interesting where your position is. I  
6 mean, obviously, you're not in favor of the P line  
7 segments.

8 JUDGE BEARDEN: That's correct.

9 CHAIRMAN SMITHERMAN: But the LCRA  
10 preferred line would not go through Mason County; it  
11 would go south of Mason County, sort of more or less in  
12 a straight line from the two substations. And, yet,  
13 you-all think that's not the way to go. Could you  
14 expand upon that a little bit?

15 JUDGE BEARDEN: Well, I have to agree with  
16 Judge Stroehrer that when we began this process a year or  
17 so ago, our feeling was the I-10 route to begin with.  
18 And again, as Judge Stroehrer said, the Mason County  
19 Commissioners Court supported the I-10 route. I also  
20 agree with Judge Stroehrer in thinking that there is less  
21 disturbance by following the route through I-10 instead  
22 of going through Tierra Linda, which it does affect  
23 residences like you were talking about, Commissioner.

24 The preferred route that LCRA has selected  
25 as their route, I've not spent as much time studying



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1 this, studying how many residences, how much effect it  
2 would have on this. I think that I will have to agree  
3 with Texas Parks & Wildlife studies, that when you get  
4 out and look at the environmental concerns and the  
5 impact that it would have by taking the P line is the  
6 main reason why our court and our group, our Heritage  
7 Association, our P line association has supported the  
8 I-10 route.

9 I hope that answers your question without  
10 beating around the bush.

11 CHAIRMAN SMITHERMAN: No, it's good and  
12 it's consistent with the open house responses in Mason  
13 with the No. 1 ranked criteria was minimize  
14 environmental impacts, and No. 2 was use or parallel  
15 other existing compatible right-of-way.

16 JUDGE BEARDEN: That's correct. Thank you  
17 again.

18 CHAIRMAN SMITHERMAN: Thank you.

19 Who else?

20 JUDGE MURR: Good morning, Commissioners.  
21 My name is Andrew Murr. I'm the County Judge of Kimble  
22 County in Junction. And I wanted to take only a brief  
23 moment to point out, even shorter than my colleagues,  
24 that our Commissioners Court issued two resolutions, one  
25 during 2009 and 2010, that were provided as part of our

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1 statement of position as an intervenor.

2                   Importantly, I would like to note that  
3 there are proposed routes that run both to the north and  
4 the south of Kimble County airport. And what we have  
5 stated in our resolutions, our statement of position,  
6 and continue to state is that while we have refrained  
7 from expressing a preference of a route through Kimble  
8 County, we ask that any harmful or negative impacts to  
9 the airport caused by proposed segments -- and I think  
10 they are still B, 19C, B21B and Y11 -- please be  
11 mitigated. Or if it is unable to mitigate those  
12 negative consequences, that they not be located next to  
13 the airport.

14                   Since 1997, our county, in relationship  
15 with both federal and state agencies, has spent almost  
16 \$4.6 million on our airport, and we're actually slated  
17 to spend close to another \$900,000 this year on  
18 improvements and maintenance. And so it is something  
19 that is a public asset to our community, and we're doing  
20 the best we can to ensure that it is there for the  
21 future.

22                   And with that, I have no further comments,  
23 unless you have questions.

24                   COMM. ANDERSON: Judge, do you have any  
25 view as to if a route is picked, either the route

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1 recommended by the Administrative Law Judges or for some  
2 modification to it, that does go around Junction, either  
3 the north or south, as to which one is likely to have  
4 the least impact on the airport?

5 LCRA has, in their evidence and as well as  
6 in their exceptions and replies, made the point that by  
7 going north around the airport, they can actually site  
8 the line lower than an intervening hill, which  
9 apparently is to the north of -- just north of the  
10 runway. Do you have -- I mean, do you have any view one  
11 way or the other on this? And that, obviously, is hotly  
12 contested by one group of intervenors.

13 JUDGE MURR: To answer that question, we  
14 didn't go and hire any experts. And I myself don't know  
15 a lot about aviation. I have a fear of heights anyway.  
16 So turning from 290 to Mopac was enough for me this  
17 morning.

18 (Laughter)

19 JUDGE MURR: What I will tell you is that  
20 we do understand that the FAA will be involved through  
21 the process at a later date. And since we consider them  
22 to also be experts, we're going to defer to the FAA. If  
23 the FAA has problems with it, then, you know, most  
24 likely we feel that we'll have problems with the  
25 attractiveness and future use of our airport facilities

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1 to those that use it locally and those that use it as a  
2 stopover.

3 So that's why we identified both the  
4 northern routes and the I-10 route, because -- and I  
5 really want to clarify. The Commissioners Court didn't  
6 rule out any of those routes. We just asked that they  
7 be mitigated so they don't harm it. If that process is  
8 available to LCRA, then we are happy with that.

9 Initially I would think we advocated it  
10 not be in our back yard. But beyond that, we're just  
11 focusing on the airport.

12 CHAIRMAN SMITHERMAN: Well, the proposed  
13 mitigation, if it runs along I-10, is an awfully  
14 expensive proposal. I'm still not sure how you can  
15 spend that much money on such a short amount of  
16 infrastructure. And I'm going to ask Ferdie some  
17 questions about that at some point in time.

18 COMM. NELSON: Yes. I have questions,  
19 too, about the flooding stuff, and I also have questions  
20 about -- because I've always heard that if flooding is  
21 an issue, underground lines are not good. So I've got  
22 questions about that when we get to LCRA.

23 JUDGE MURR: And I look forward to  
24 listening in on that as well.

25 COMM. NELSON: Thank you.

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1 JUDGE MURR: Anything further?

2 CHAIRMAN SMITHERMAN: Great. Thank you,  
3 Judge.

4 JUDGE MURR: Thank you, Commissioners.

5 CHAIRMAN SMITHERMAN: All right. Any  
6 other elected officials who have not spoken, wish to  
7 speak?

8 Great.

9 MAYOR WAMPLER: Commissioner Smitherman?

10 CHAIRMAN SMITHERMAN: Yes?

11 MAYOR WAMPLER: David Wampler, Mayor of  
12 the City of Kerrville.

13 CHAIRMAN SMITHERMAN: Sure. Come on down,  
14 Mayor. Didn't mean to exclude you.

15 MAYOR WAMPLER: I wasn't aware if we were  
16 finished with the judges and getting down to us lowly --

17 CHAIRMAN SMITHERMAN: We're working our  
18 way down, yes, sir.

19 MAYOR WAMPLER: I want to take a moment to  
20 thank you-all for your time and for the opportunity for  
21 me to be here today in my role as mayor of the City of  
22 Kerrville and representing our voters and taxpayers  
23 there.

24 CHAIRMAN SMITHERMAN: Just state your name  
25 again so the court reporter --

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1                   MAYOR WAMPLER: My name is David Wampler,  
2 and I'm here representing the City of Kerrville as Mayor  
3 of the City of Kerrville.

4                   It's clear to all of us involved here  
5 today that this process and the proposed line is going  
6 to have a perpetual impact and negative impact on parts  
7 of the Hill Country. And to my knowledge, no one wants  
8 to see the line pass either close to their property or  
9 certainly across their property, and we certainly  
10 understand that.

11                   However, since petitioning the Public  
12 Utility Commission a few months ago to reexamine ERCOT's  
13 analysis and finding supporting the need for this line  
14 and receiving word from the Public Utility Commission  
15 that this line is indeed needed and will be constructed,  
16 the City of Kerrville's position has been and continues  
17 to be to support the LCRA's preferred route.

18                   I'm here today on behalf of all of the  
19 citizens of Kerrville who, as taxpayers, will suffer  
20 permanent irreparable harm as a result of the loss of  
21 future ad valorem value estimated to be equivalent to  
22 32 percent of our total ad valorem tax base as it stands  
23 today if this line is constructed across our gateway and  
24 through our natural and really only major growth  
25 corridors.

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1           The line, if placed along I-10 through  
2 Kerrville, will do irrevocable harm to the city's  
3 finances, it will impact our future financial growth and  
4 the flexibility needed to provide basic service and,  
5 again, will ruin our only natural growth corridor.

6           I represent those homeowners and property  
7 owners and business owners who lack the resources to  
8 intervene or to be here today. They will be adversely  
9 affected by the placement of this line along I-10  
10 through our city. The LCRA preferred route impacts 18  
11 habitable structures that lie within 500 feet of the  
12 line; whereas, the I-10 route affects nearly seven times  
13 that many -- 123 habitable structures. Among those 123,  
14 we believe 17 lie along that northern line through  
15 Kerrville, two of which are permanent homes. We believe  
16 that eight families will lose their homes.

17           And I reject the assertion or the  
18 implication made by other intervenors in this case that  
19 the type, style or quality or construction of your home  
20 should have any bearing whatsoever in deciding where the  
21 line should go relative to any other type, style or  
22 quality of home. The fact is, is that we believe eight  
23 people in my community will have to leave their homes  
24 and will be uprooted as a result of the alignment as  
25 proposed down I-10.

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1                   Additionally, one of those habitable  
2 structures is a major employer in our area, employing  
3 over 50 people and contributing greatly to our tax base,  
4 both from a sales tax and ad valorem standpoint.

5                   Our city continues to evaluate  
6 opportunities for expansion along the gateway. We are  
7 currently in the process of a \$4 million infrastructure  
8 project, taking water and wastewater virtually across  
9 one of the areas that the line would impact at the  
10 intersection of Harper Road and I-10. We are also  
11 evaluating a proposal to add additional access along  
12 I-10 that would open up commercial and residential  
13 development that would have a significant economic  
14 impact on our community. And I believe that placement  
15 of this line along that route would have a negative  
16 impact on those discussions and the future of that  
17 developable property.

18                  Nearly 20,000 cars travel I-10 through  
19 Kerrville every day. And for many people, that's their  
20 introduction to the Hill Country. I believe we could  
21 all agree that you would be hard-pressed to find a more  
22 scenic stretch of interstate in this region, and that  
23 just passes from the south of Kerrville to several miles  
24 to the west of Kerrville.

25                  We're a center for trade, tourism,



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1 commerce, and we continue to make investments to  
2 facilitate those industries and those economic  
3 activities for the betterment of our community and our  
4 taxpayers.

5               So with my brief summary today and by our  
6 positions detailed in our official resolutions and  
7 testimony, I respectfully ask each of you to consider  
8 the lasting negative impact and alignment along I-10 as  
9 proposed would have on our community and taxpayers, and  
10 I ask that you recognize and take into consideration not  
11 only the physical and business impact but the fact  
12 people in my community will lose their homes if the line  
13 is constructed along I-10 through Kerrville.

14               Our support of the LCRA's preferred route  
15 has been consistent, and I urge you to rule in favor of  
16 a route that does not bisect the gateway of our city.  
17 And thank you for your consideration and for your time.  
18 And I would be happy to take any questions.

19               COMM. NELSON: I have a question.

20               MAYOR WAMPLER: Yes, ma'am.

21               COMM. NELSON: If the right-of-way is  
22 narrowed to 100 feet because LCRA uses monopoles, then  
23 you end up with eight structures within the  
24 right-of-way. Correct?

25               MAYOR WAMPLER: I haven't examined that,

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1 but I'll take your word for it if that's --

2 COMM. NELSON: That's my understanding.

3 MAYOR WAMPLER: Okay.

4 MR. JOURNEAY: And then I have one of the  
5 great big blown-up maps behind me. And those structures  
6 are mobile homes, which at least if the parties alleged  
7 that they were entitled to less protection, I'm not  
8 alleging that. I'm simply saying that a mobile home is  
9 easier to move than a home with a foundation, and I just  
10 want clarity on the eight homes from you.

11 MAYOR WAMPLER: Okay. Well, if I may, in  
12 your previous questioning of the Kimble County Judge --  
13 or I believe -- or the Gillespie County Judge -- excuse  
14 me -- the thought that -- first of all, from a  
15 topographical standpoint, that stretch of highway would  
16 not lend itself to commercial development. So, in other  
17 words, the highest and best use of that particular area  
18 in my opinion would not support commercial development,  
19 No. 1. And No. 2 --

20 COMM. NELSON: And why is that?

21 MAYOR WAMPLER: Because of topography --

22 COMM. NELSON: Okay.

23 MAYOR WAMPLER: -- because it's fairly  
24 steep. There are a number of hills there. It does lend  
25 itself better for the use that it's currently being used

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1 for or for future development as permanent type  
2 residential.

3 I would say that the mobile home park in  
4 question has been there for many, many years. I've been  
5 in Kerrville for 17 years, and the park there has been  
6 there far -- before there. There are a couple of  
7 permanent structures there also. And I would say that  
8 while theoretically it's possible to hitch up a mobile  
9 home and move it 100 feet away, I think in this  
10 particular circumstance, that would be unlikely. These  
11 people would have to find new homes and new sites  
12 altogether rather than moving those structures off, to a  
13 large extent.

14 And finally, by running the line along  
15 there, is there a better use of that property? My  
16 opinion is that we would lose the use of the property to  
17 a large extent, even with monopoles and shortening the  
18 right-of-way. So, you know, we would be denied as a  
19 community the use of that property from a development  
20 standpoint.

21 COMM. NELSON: Okay. Thank you.

22 MAYOR WAMPLER: Thank you.

23 CHAIRMAN SMITHERMAN: Mayor, thanks again  
24 for coming.

25 MAYOR WAMPLER: Thank you for having me.

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1                   CHAIRMAN SMITHERMAN: You know, we did the  
2 best we could. We eliminated one complete line from  
3 Kendall to Gillespie to Newton.

4                   MAYOR WAMPLER: Yes.

5                   CHAIRMAN SMITHERMAN: I hope you  
6 appreciate that we've been listening, and we have done  
7 everything that we can to try to mitigate the amount of  
8 infrastructure that has to be built out here. But the  
9 reality is, because of the lack of infrastructure, given  
10 what the Legislature has directed us to do in terms of  
11 building lines for wind energy development, and to a  
12 large degree as well, mitigating existing congestion,  
13 this line has got to be built.

14                   Like you, I've sat here for many years,  
15 and it's only recently that I've had a person say to me,  
16 "Please put the line on my property." We had one in a  
17 previous case. An elderly gentleman said, "You can put  
18 it right here." He just pulled out the map and showed  
19 us where to put it.

20                   But in this case in particular, I find the  
21 position of AC Ranches to be very interesting. I mean,  
22 they've basically said they want the line. I know  
23 that's not in your neck of the woods.

24                   MAYOR WAMPLER: Sure. Right.

25                   CHAIRMAN SMITHERMAN: But I do think it's

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1 important that we be clear that we've got one big  
2 landowner that really wants the line running through his  
3 property, for a variety of personal reasons. So I think  
4 that that is an interesting situation, at least for me,  
5 that is compelling on the western edge of the study  
6 territory.

7                   You know, I guess my last question for you  
8 is the one similar to the one I've put to the other  
9 elected officials, is as between the line that runs down  
10 I-10 or the one that is recommended by the Judge, which  
11 of those would you support?

12                   MAYOR WAMPLER: We would support the line  
13 recommended by the Judge, without hesitation.

14                   CHAIRMAN SMITHERMAN: Okay. All right.  
15 And we've done this a lot around here, and there's some  
16 ground rules. We know everybody feels strongly about  
17 their position. We're going to try to give as many  
18 people as possible an opportunity to speak, but we  
19 really can't have anybody commenting audibly about  
20 someone else's comments. You wouldn't want them doing  
21 that to you, so let's be respectful in that regard.

22                   I pulled out the testimony -- I don't know  
23 if this is all your testimony, but my folder says City  
24 of Kerrville. And there is Kerr County Exhibit No. 3, I  
25 believe, which is this car dealership picture.

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1 MAYOR WAMPLER: Yes, sir.

2 CHAIRMAN SMITHERMAN: Was that part of  
3 your testimony, Mayor?

4 MAYOR WAMPLER: Yes, sir.

5 CHAIRMAN SMITHERMAN: Okay.

6 MAYOR WAMPLER: And the owner of the car  
7 dealership, Cecil Atkission, is here today.

8 CHAIRMAN SMITHERMAN: Okay.

9 MAYOR WAMPLER: And that is the habitable  
10 structure that I referred to in my comments earlier.

11 CHAIRMAN SMITHERMAN: Okay. So this big  
12 cross, is that associated with the dealership or is  
13 there a church up there?

14 MAYOR WAMPLER: Neither.

15 CHAIRMAN SMITHERMAN: Okay. Tell me about  
16 it.

17 MAYOR WAMPLER: There is a local nonprofit  
18 religious organization in Kerrville and Kerr County that  
19 established itself some years ago for the purposes of  
20 raising money to establish a prayer garden and a, I  
21 guess for lack of a better description, a religious site  
22 on that hillside overlooking I-10, and they have been  
23 successful in purchasing property. In fact, there was a  
24 legal case that was taken up by neighbors of that area  
25 that did not want that use to be adjacent to their

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1 property. That was mediated and settled, and that group  
2 continues to raise money. They erected the cross late  
3 in 2010, I guess summer of 2010, and continue to raise  
4 money for their purposes.

5 CHAIRMAN SMITHERMAN: So is this the  
6 roadway that leads up to there? I assume that you can  
7 take this roadway up and you can walk around or pray  
8 or reflect or whatever --

9 MAYOR WAMPLER: Yes. There is an access  
10 point off of Benson Drive. Benson Drive runs along the  
11 front of the car dealership and carries on, and you can  
12 access the cross site from a roadway that they've  
13 constructed to go up to the top of the hill.

14 CHAIRMAN SMITHERMAN: You know, only  
15 someone in my position, you know, the first thing I saw  
16 on this map is a big transmission tower right here.

17 MAYOR WAMPLER: Right.

18 CHAIRMAN SMITHERMAN: Any other questions  
19 of the Mayor?

20 COMM. ANDERSON: I have one.

21 CHAIRMAN SMITHERMAN: Ken.

22 COMM. ANDERSON: You heard my question, I  
23 hope, of the County Judge --

24 MAYOR WAMPLER: Yes, sir.

25 COMM. ANDERSON: -- the Kerr County Judge

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1 about the LCRA observation or comment in their replies  
2 to the exceptions, about for a brief period going south  
3 over I-10 and through what amounts to parking lots and  
4 then going back across I-10, picking up, which would  
5 appear to avoid a number of habitable structures as well  
6 as the car dealership.

7                   And I was looking at a photo, and I'm  
8 going to have more questions for LCRA about that. If --  
9 and I understand you don't want it; nobody wants it.  
10 I'm not trying to detract -- but if we ultimately  
11 decided to go down I-10 through Kerrville on the way to  
12 the Kendall station, is that an option that you are  
13 likely to prefer over routing it down the north side?  
14 And also it would be using monopoles and other  
15 mitigation, probably shorter structures as LCRA  
16 suggested.

17                   MAYOR WAMPLER: Commissioner Anderson,  
18 without knowing the particulars and the exact routing  
19 that you're proposing and with regard to the use of  
20 monopoles, I would --

21                   COMM. ANDERSON: Well, it's not my  
22 proposal; it was mentioned as LCRA, yes.

23                   MAYOR WAMPLER: I understand -- well, I  
24 mean, the hypothetical that we're discussing at this  
25 time, my initial reaction is to say, "No, it would not



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1 be something that we would support," simply because of  
2 the fact we are obviously concerned about habitable  
3 structures, and that's what we've talked a lot about  
4 here today.

5 But from the City of Kerrville's  
6 standpoint, the impact to the undeveloped sections along  
7 I-10 at our gateways, both at Harper Road and I-10 and  
8 Highway 16, are of critical importance to us. So  
9 without knowing what impact your hypothetical has on  
10 those areas, I would hesitate to say that we could  
11 support that.

12 COMM. ANDERSON: I'm not asking you  
13 whether you support it, I guess. Maybe I was -- I'm  
14 trying to make notes about, to be prepared to deal with  
15 individual concerns if we go a certain route --

16 MAYOR WAMPLER: Yes.

17 COMM. ANDERSON: -- because there's the  
18 route, but then there's also instructing LCRA as to  
19 individual mitigation efforts that we can include in our  
20 order. LCRA has suggested -- has thrown out the idea --  
21 I don't want to overstate what they said in their  
22 exceptions -- about crossing over, going through a  
23 couple of commercial parking lots on the south side and  
24 back over. And looking from the photo that's actually  
25 in your exceptions, of a blowup of one of the sections,

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1 it looks like there is no undeveloped property. In  
2 that scenario -- but I don't want to -- I don't want to  
3 pick a route for you if you -- but this is your  
4 opportunity to say, "Well, despite our opposition, if  
5 you go this way, that is something we would at least  
6 want the Commission to entertain." That's what I'm --  
7 that's why I'm asking the question. It's not to somehow  
8 trap you or get you to change your position.

9 MAYOR WAMPLER: Well, if we're speaking  
10 hypothetically, I would say hypothetically, a line going  
11 across a parking lot at Lowe's or elsewhere is not a  
12 drastic concern to me.

13 The concern that I have is, how do we get  
14 to that point and where does the line go after it  
15 reaches that point? To the extent that we have a  
16 significant interest and a significant on-going interest  
17 for a tax base, for investment and for growth of our  
18 community, how those lines impact the undeveloped  
19 property on the gateway of our city both to and fro  
20 across that parking lot continues to be a concern to me.

21 COMM. ANDERSON: Thank you.

22 MAYOR WAMPLER: Thank you very much.

23 CHAIRMAN SMITHERMAN: Thanks, Mayor.

24 MAYOR WAMPLER: Appreciate it.

25 CHAIRMAN SMITHERMAN: Appreciate your

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1 comments. Anyone else at the mayor, council member,  
2 county commissioner level? We may have missed -- again,  
3 thank you-all for coming.

4 So let's do this: I know we have a couple  
5 of groups that are here that have multiple members --  
6 and, again, if we could get just a limited number of  
7 people who want to express a point of view on behalf of  
8 that group. I know we have both the Clear View Alliance  
9 folks as well as the Tierra Linda people. So why don't  
10 we start with Clear View Alliance. Who's the  
11 spokesperson for Clear View Alliance?

12 MR. BAYLIFF: Your Honor, Brad Bayliff for  
13 the record. I'm the attorney for Clear View Alliance.  
14 I know you've heard plenty from us. There are several  
15 people who would like to make comments about the impact  
16 on their property and about their concerns, and we've  
17 asked them to be able to speak to you today.

18 We did not encourage a lot of people to  
19 come. We asked only those who wanted to be able to talk  
20 to you to be able to actually come. We've made a lot of  
21 comments in our briefing. We appreciate you reading  
22 that, and it's obvious you've been paying attention to  
23 it. So we appreciate that.

24 We did provide a list to Mr. Journeay of  
25 several of the landowners, and then we also have Bill

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1 Neiman who's the president of Clear View Alliance and  
2 has been involved in this process for 20 years -- 20  
3 months. It seems like 20 years.

4 (Laughter)

5 MR. BAYLIFF: And he may have some summary  
6 comments after the other folks have talked.

7 CHAIRMAN SMITHERMAN: Well, do you want to  
8 start with Bill or do you want to start with someone  
9 else?

10 MR. BAYLIFF: We'll start with Bill.

11 CHAIRMAN SMITHERMAN: I think we've seen  
12 him here before. Welcome.

13 MR. NEIMAN: Okay. Thank you. My name is  
14 Bill Neiman, a resident of Kimble County.

15 CHAIRMAN SMITHERMAN: Now, Bill, tell us  
16 in particular where you live so we've got a good  
17 understanding.

18 MR. NEIMAN: I would be glad to. I'm  
19 approximately four miles east of the Kimble County Goat  
20 and Sheep Sale Barn." It's probably not going to be on  
21 your maps, but --

22 CHAIRMAN SMITHERMAN: I thought you were  
23 going to say something like, you know, the "Kimble  
24 County line, intersection with, you know" --

25 (Laughter)

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1 MR. NEIMAN: How about a lat and lon, you  
2 know? If you are familiar with the last clean river in  
3 Texas -- the Llano River -- it makes two big humps right  
4 by Junction. I'm on the second hump.

5 That probably doesn't help you too much  
6 either, but --

7 CHAIRMAN SMITHERMAN: Closer.

8 MR. NEIMAN: Yeah. Do you have a map that  
9 has the river there?

10 CHAIRMAN SMITHERMAN: Yeah. We've got  
11 them behind us. Go ahead.

12 MR. NEIMAN: I'm out, I guess, probably  
13 seven, eight miles from the high school. My children  
14 grew up there.

15 I appreciate the opportunity that you're  
16 giving me to undertake an unbelievable process. It does  
17 kind of seem like 20 years, but it's been 20 full  
18 months.

19 I attended the first open house in the  
20 spring of 2009 that LCRA presented the news of the CREZ  
21 lines, and that was the first I had ever heard of it.

22 And once that occurred, a lot of the  
23 ranchers stood around the maps. And it seemed like it  
24 took us a while to kind of overcome the shock, but  
25 within about 20 minutes we concluded that I-10 was a

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1 place to put an infrastructure of this type.

2 So I began to get more and more deeper  
3 involved to try and learn. As the process -- it's  
4 exceedingly complex for landowners. I'm sure you've  
5 heard this over and over. But I began to see the need  
6 in our community to raise awareness.

7 And throughout this entire process I've  
8 done everything within my reach to get accurate  
9 information, and at the same time stay on a high road  
10 and maintain the best respect I can for all of the  
11 people involved in this. It's a very difficult process.  
12 And you sit at the helm at an incredible ship that you  
13 drive here.

14 It's to be commended that you get up in  
15 the mornings and can tackle this job. I respect you for  
16 that. Some of the process has been tough. At one point  
17 we were -- we were advised by the Lower Colorado River  
18 Authority that there would be no more landowner  
19 communication. There had been an inter-utility memo  
20 issued not to talk to landowners anymore.

21 You know, there has been some frustrating  
22 processes along the way.

23 COMM. NELSON: When was that? I'm sorry  
24 to interrupt you.

25 MR. NEIMAN: That would have been

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1 probably --

2 CHAIRMAN SMITHERMAN: You didn't think  
3 that was going to go by without...

4 (Laughter)

5 MR. NEIMAN: Yeah. By -- well -- I'm  
6 sorry. And I -- in fact, the first time I came in this  
7 room, that was to deal with the response that I had high  
8 regards how you-all approached it, which was to delay  
9 and expand the study area back in September of '09.

10 So that memo, if you want to try and pin  
11 me down on the date, probably was actually in the summer  
12 of '09 -- August or July/August. And, here again, this  
13 has been very difficult. I've tried my darndest to be  
14 honest, above board, and accurate. It's a very complex  
15 process.

16 The expansion of the study area was -- is  
17 such a blessing that allowed the landowners this period  
18 of time to try it -- those that were wanting to  
19 participate. You've done your job to allow that. I am  
20 really encouraged by the high level of professional  
21 ethics at the administrative law process.

22 That was really -- it was a -- it met and  
23 exceeded my expectations of what I thought might occur  
24 there. The other thing that is very encouraging about  
25 this process is, since my first LCRA open house, I went

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1 to another one at the Kerrville one in 2009 and then the  
2 expansion of the study area, then the whole second round  
3 of open houses. I went to every one of them in the  
4 winter of 2010.

5 A group of us landowners got together and  
6 built an accurate quarter scale model of a steel lattice  
7 tower and mounted it on the back of an 18 wheeler and  
8 brought it to each open house.

9 We also built a scale model of a typical  
10 hill country ranchhouse. Because of the scale, we could  
11 set the home outside the right-of-way. People were  
12 overwhelmingly across the whole region -- this was very  
13 encouraging -- their willingness to coalesce around the  
14 global use of monopoles no matter where this thing gets  
15 built.

16 That, I believe, was the attracting aspect  
17 of why Clear View Alliance became so large, as well as  
18 the common regional understanding that an infrastructure  
19 item of this magnitude is very difficult to find an  
20 industrial place to put that in the hill country.

21 When I first moved to Junction 15 years  
22 ago, I attended some meetings on a local level to try  
23 and understand my community that I had brought my family  
24 to, and TxDOT had a figure that was pitched back in 1995  
25 that 30,000 vehicles a day go by I-10 on Junction, but



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1 20,000 of them are trucks.

2               Since my 15 years of living outside of  
3 Junction, that intersection of Main Street and I-10 is  
4 now -- two sides of it are truck stops, McDonald's and a  
5 Church's Fried Chicken, and there are some lodging  
6 facilities there and it's become a major stopping place.

7               There's something about the common sense  
8 that the ranch community throughout the hill country  
9 understands that the likely development and the land  
10 uses along a major interstate corridor are somewhat  
11 predictable.

12              One of the bigger disappointments I've had  
13 with this process has been the difficulty in being able  
14 to distinguish through the criteria as it exists, and I  
15 think this is some of the struggle you have now -- the  
16 habitable structures and the land use between an  
17 interstate corridor and the land use of residential,  
18 retirement, and recreation.

19              Those are very contrasting, but there's  
20 not a good, simple vehicle that I could see that really  
21 addresses future land use. I would just like to bring a  
22 couple of more points. I'm very concerned that some of  
23 the other landowners are -- within Clear View are able  
24 to express their concerns.

25              A couple of the other larger

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1 disappointments in this process was to see the impact of  
2 this on community values. It's very difficult. Because  
3 I am based at Junction -- and it's been touched on a  
4 little bit -- I'm a user of the Kimble County Airport.

5               One of the disappointments I've had in  
6 this process is that during the settlement -- the  
7 preconference settlement period -- there's kind of a  
8 period that leads up to the hearing. So there's an  
9 opportunity to talk in more detail about some of the  
10 issues. Clear View was working closely with the Staff  
11 to facilitate a joint meeting with LCRA in the field to  
12 focus on what we -- our engineers were beginning to find  
13 that clearly indicate there are above-ground options  
14 along the interstate, and they're, obviously, much more  
15 economical than the unbelievable single quotation that  
16 was put into evidence by the utility.

17               But being aware that only four days before  
18 a tentative meeting that we were trying to facilitate  
19 there was an unraveling of another CREZ case up in north  
20 Texas that was thought to have been settled. It kind of  
21 came apart, and the Staff seemed to lose -- they had a  
22 change in their interest in trying to facilitate that  
23 meeting and we never got a chance to get on the ground  
24 with the utility or the Staff to address this airport,  
25 and that was disappointing.

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1                   We worked as hard as we could through the  
2 hearing process to get that out on the table and  
3 transparent, but it is not a sound byte. It has some  
4 measure of complexity to it, and it can almost only be  
5 explained through graphics and an expert walking through  
6 it.

7                   However, being a pilot, having two  
8 aircraft based there and locally recognized as the most  
9 frequent visitor to the fuel pumps, I have a deep  
10 understanding of the difference that the northern  
11 routing of this makes.

12                   CHAIRMAN SMITHERMAN: Maybe you can speak  
13 to Commissioner Anderson's question about the hill.

14                   MR. NEIMAN: Yes, I would like to. Kimble  
15 County only has one established instrument approach, and  
16 it is the approach from the north to the south, which  
17 would be flying directly over the hills that you're  
18 talking about on the north side.

19                   The floor of that approach is actually  
20 already penetrated by the hills themselves, and anything  
21 that is further elevated brings detriment to the quality  
22 of that approach. In an instrument condition when you  
23 are with low visibility and a power-off setting in your  
24 aircraft, you are losing options if you encounter or  
25 need to make an erratic or quick change.

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1                   It's very similar and reflects the issues  
2 in driving that you would have to make a movement to  
3 increase your power, and then the response time for the  
4 power to develop and the aircraft to become  
5 maneuverability to avoid an obstruction is very  
6 different than on a power-on departure, which probably  
7 90 percent of the departures at Kimble County are  
8 southbound, and you have full control and full power  
9 upon your departure.

10                   So, unfortunately, this airport -- I don't  
11 know -- I don't want to spend all of my landowners' time  
12 addressing this, but there are some interesting and  
13 credible above-ground alternates and options in the  
14 record. They are difficult to understand. Since the  
15 hearings, another very interesting aspect has occurred  
16 of a willing landowner that allows the option to be  
17 looked more closely by crossing the river -- the North  
18 Llano River -- and gaining another 1,000 or 1500 feet to  
19 the south.

20                   The more south you go the air space is  
21 rising, and nearly 100-foot structures could be built  
22 there.

23                   CHAIRMAN SMITHERMAN: Well, I want to be  
24 careful going too far along this line, because we don't  
25 have that in evidence.

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1 MR. NEIMAN: That's correct.

2 COMM. ANDERSON: But I would make a note  
3 to two things. I want to go back to what LCRA has said  
4 they can do if you go north around Junction, north  
5 around the runway, is that they believe there's the  
6 ability to actually build the towers, depending on where  
7 they site them -- the poles -- below the crest of that  
8 hill north runway.

9 MR. NEIMAN: Yes. That was stated in the  
10 record. However, Commissioners, being a pilot and  
11 making that approach, all of us will use Highway 83 as a  
12 visual guide.

13 It is very near, if not on the approach  
14 itself. The location where the lines cross is on  
15 hilltops. And to cross that highway that has structures  
16 will already be quite high. And then in order to slip  
17 off and get on one or the other of the facing slopes or  
18 down into a nearby canyon will require a distance of it  
19 running on the hill just due to crossing the highway.

20 COMM. ANDERSON: The other observation I  
21 will make is that our typical order -- and, in fact,  
22 it's in, I think, Commissioner Nelson's memo -- is to  
23 allow more than minor deviations where it's both cost  
24 effective as well as you obtain all the consent of the  
25 landowners.

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1                   COMM. NELSON: And you continue to go in  
2 the same direction.

3                   COMM. ANDERSON: And you continue to go,  
4 but --

5                   CHAIRMAN SMITHERMAN: Basically in the  
6 same direction.

7                   COMM. ANDERSON: But, frankly, looking at  
8 the map, if there were, you know, such, that could be  
9 agreed to by landowners on the south side.

10                   It looks to me like that would be probably  
11 both cost effective as well as a lot more direct. We've  
12 gone out of our way in these CREZ dockets, it's also  
13 become part of, I think, our regular transmission -- our  
14 regular CCN dockets to give the transmission service  
15 provider the ability to make major deviations where they  
16 meet that criteria.

17                   MR. NEIMAN: Well, it does -- from my  
18 observations also, it cleans up the line. I believe  
19 that the loop around Junction to the north will be more  
20 costly than exploring the option on --

21                   COMM. ANDERSON: And I do intend to have a  
22 conversation with LCRA later about -- at this meeting  
23 about their use of some of that authority.

24                   CHAIRMAN SMITHERMAN: Why don't we -- I  
25 know this sort of interrupts the flow a little bit.

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1 But, Ferdie, do you or someone want to come up? I mean,  
2 while we're on this airport issue, let's go ahead and --

3 MR. NEIMAN: Do you want me to stay put?

4 CHAIRMAN SMITHERMAN: You can. Sure.

5 Let's go ahead and tease this out a little bit.

6 COMM. NELSON: Yeah, because I want you to  
7 also talk about the flooding issue, because you-all  
8 filed testimony on that.

9 MR. NEIMAN: That would be great.

10 COMM. NELSON: If you could just sort of  
11 summarize it. Your opinion is, that's not an issue.  
12 I'm not overstating that, am I --

13 MR. NEIMAN: If I can --

14 COMM. NELSON: -- or a very small risk?

15 MR. NEIMAN: Shall I continue?

16 COMM. NELSON: Go ahead.

17 MR. NEIMAN: Okay.

18 CHAIRMAN SMITHERMAN: Let's talk about the  
19 airport first, if you don't mind, and then we'll come  
20 back to --

21 COMM. NELSON: Okay.

22 MR. NEIMAN: Okay. Either way.

23 COMM. NELSON: And it is about the  
24 airport, Barry. It's about the flooding issue with  
25 respect to the line on the I-10 part of the route.

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1 CHAIRMAN SMITHERMAN: Well, here's the map  
2 of that section.

3 MR. RODRIGUEZ: Thank you, Commissioners.  
4 For the record, Ferdie Rodriguez, in-house counsel for  
5 LCRA TSC.

6 CHAIRMAN SMITHERMAN: Pull that mic up  
7 closer, Ferdie, please.

8 MR. RODRIGUEZ: Excuse me. Mr. Chairman,  
9 Commissioners, which part of it did you want to talk  
10 about first -- the northern approach to the airport or  
11 the southern approach?

12 COMM. ANDERSON: Let me ask this  
13 question -- and it's a little bit, I suppose, in reverse  
14 order. But let's assume -- and it's just for  
15 discussion. I haven't ultimately decided where I come  
16 out as between the various routes.

17 Let's assume that we picked the route  
18 recommended by the ALJs, which includes the northern  
19 loop around Junction and the airport.

20 MR. RODRIGUEZ: Okay.

21 COMM. ANDERSON: And then let's assume,  
22 however, that one or more landowners to the south  
23 actually volunteer a routing that takes it off the river  
24 bottom or wherever to the south, which at least looking  
25 at my larger scale map would appear to be more direct.



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1 Do you believe -- and then you are  
2 familiar with our major deviation language -- do you  
3 believe that that major deviation language would give  
4 you the ability assuming it's a cost effective  
5 alternative to go ahead and route it directly to the  
6 south?

7 In this case, it might well be, I guess,  
8 south of I-10 -- I don't know -- but for some period or  
9 for some length before crossing back to the north?

10 MR. RODRIGUEZ: Commissioner Anderson, I  
11 think the problem that we have with that is that our  
12 engineers do not believe that the southern alternative  
13 that Mr. Neiman was talking about is safe.

14 That's the problem. It is not safe.

15 CHAIRMAN SMITHERMAN: Safe from what  
16 perspective?

17 MR. RODRIGUEZ: From the perspective of a  
18 transmission engineer who is trying to design a  
19 transmission line that, first of all, is going to be on.  
20 We don't have to trip on and off. From a planning  
21 perspective --

22 COMM. ANDERSON: Ferdie, I think you're  
23 missing my question. This is -- I'm not suggesting the  
24 route they proposed in the -- or that was proposed in  
25 the floodplain.

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1 MR. RODRIGUEZ: You're right. Then I  
2 think I have misunderstood your question.

3 COMM. ANDERSON: You misunderstand. We  
4 have major deviation language in the order --  
5 standard -- and Commissioner Nelson has it or has  
6 proposed that it be included in this order.

7 If a group of landowners around the  
8 Junction area said, "If you move it 1,000 or 2,000 feet  
9 to the south" -- I'm talking about south of where the  
10 current MK33 line would go -- and you get consent of all  
11 the landowners; you meet the criteria; it's more direct;  
12 it's more cost effective; and you get consent of all  
13 landowners, do you believe that the -- that the major  
14 deviation language would give you the ability to look at  
15 that alternative?

16 MR. RODRIGUEZ: May I have just a moment?

17 COMM. ANDERSON: Sure.

18 COMM. NELSON: Before he answers, was the  
19 landowner located south of I-10?

20 MR. NEIMAN: Yes.

21 COMM. NELSON: Is the landowner within the  
22 floodplain?

23 MR. NEIMAN: The landowner is on the south  
24 side of the North Llano River in direct alignment with  
25 the airport.

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1                   COMM. ANDERSON: But it would be out of  
2 the -- presumably out of the floodplain.

3                   MR. NEIMAN: A significant portion of the  
4 city of Junction is in a floodplain. So --

5                   (Laughter)

6                   CHAIRMAN SMITHERMAN: Well, you can see  
7 that from the map.

8                   MR. NEIMAN: It's out of the floodway,  
9 yes.

10                  CHAIRMAN SMITHERMAN: Why don't we take a  
11 10-minute break here. You guys can caucus and --

12                  COMM. NELSON: That's a good idea.

13                  CHAIRMAN SMITHERMAN: Restrooms are back  
14 here. They're also -- they're on every floor. So you  
15 can take the stairs if they're crowded.

16                  COMM. NELSON: If you-all could talk  
17 together -- okay -- about that.

18                  (Recess: 12:56 p.m. to 1:13 p.m.)

19                  CHAIRMAN SMITHERMAN: Let's go back on the  
20 record. Everyone grab a seat, if you had one. Ferdie,  
21 you guys ready?

22                  Okay. When we took our break we were  
23 talking about the airport issue.

24                  COMM. NELSON: Did you guys get it all  
25 solved while we broke?

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1 MR. NEIMAN: It's already built. We are  
2 ready to turn the power on.

3 COMM. ANDERSON: And, Mr. Chairman, before  
4 you -- again, my question has to do with -- if under the  
5 assumed facts -- the assumptions -- the hypothetical  
6 facts, would our standard ordering paragraph in your  
7 view give you the authority -- I have my own view of the  
8 answer to my question, but I wanted to just -- I'm not  
9 asking to direct it. I'm not suggesting we need to --  
10 I'm just asking.

11 MR. RODRIGUEZ: Right. Thank you,  
12 Commissioner. In all candor, I'm not sure that the more  
13 expansive ordering paragraph would get us there.

14 If you will indulge me just a minute, I  
15 can try to explain the problem that we have with the  
16 southern exit out of the airport.

17 You've got a couple of different things at  
18 play. You have got FAA contours that you have to be  
19 cognizant of -- Part 77. You have another FAA  
20 requirement that you have to be aware of, and that is  
21 the obstruction slope.

22 The obstruction slope is defined by what's  
23 there. What's there now are trees. So you have the  
24 Part 77 surfaces, and then you have a lower surface  
25 that's defined by the existing obstruction which is the

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1 line of trees.

2 That's complicated by the fact that we're  
3 also trying to work around the river. You've got to  
4 have towers that are tall enough to get you over the  
5 river so that the sag is high enough over the router at  
6 flood stage so that you don't have to de-energize the  
7 line or you don't suffer damage to the line from things  
8 hitting it. So you've got those things in play.

9 If we get the towers high enough, to get  
10 the span high enough over the water, you're too tall,  
11 because now even though maybe we don't violate the Part  
12 77 surface, we are violating the obstruction slope which  
13 is lower, and in this area it's defined by the existing  
14 rim of trees.

15 We do not think it's safe for us to become  
16 the new obstruction. If you approach from the south --  
17 if you're landing from south to north, we don't want  
18 somebody hitting the line and cartwheeling onto the  
19 interstate.

20 If you're taking off to the south, we  
21 don't want somebody hitting the line and falling into  
22 the city of Junction, which is the third impediment that  
23 we have. If you go further south to try to get away  
24 from the river and flatten the line, then you're getting  
25 close to the actual grid -- the street grid of the city

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1 of Junction.

2           COMM. NELSON: Mr. Chairman, while we're  
3 talking about this, would it be appropriate to bring up  
4 the other party who's interested in this issue -- the  
5 Segrest -- I'm not sure I said that right.

6           MR. NEIMAN: You said that right.

7           COMM. NELSON: -- if they are here.

8           CHAIRMAN SMITHERMAN: Sure.

9           COMM. ANDERSON: They're here.

10          COMM. NELSON: Do you want to come up and  
11 join in the discussion?

12          MR. JOHNSON: Thank you, Commissioner  
13 Nelson. I think it's important to note in the --

14          CHAIRMAN SMITHERMAN: Would you introduce  
15 yourself?

16          MR. JOHNSON: Oh, I'm sorry. Rob Johnson  
17 with the Gardere, Wynne, Sewell, for the Segrest  
18 Intervenor.

19                 In examining particularly the southern  
20 airport discussion, it's repeatedly mentioned about this  
21 existing obstacle slope where the current tree line is,  
22 and that's the current published slope of where the  
23 highest obstacle is, and that LCRA TSC would prefer not  
24 to become the new obstacle.

25                 But if you actually look at the FAA

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1 regulations in Part 77, that is not something that FAA  
2 looks at to say, "This is creating a new obstruction."

3 If you are under the Part 77 imaginary  
4 slope, there's nothing for FAA to review even if you're  
5 creating a new obstacle slope, because you're still  
6 under what they expect to be the clear air space around  
7 the airport.

8 COMM. NELSON: So you're saying LCRA is  
9 being more conservative than the FAA?

10 MR. JOHNSON: That is correct. And it is  
11 clear from all of the testimony that the northern  
12 loop -- what we called sometimes the "b19 detour" -- it  
13 is across the Part 77 slope. It is by definition an  
14 obstruction, and it's going to have to go through the  
15 FAA review process because of that.

16 What our clients are particularly worried  
17 about is that creates special burdens on the landowners  
18 on that northern loop, but other landowners don't have  
19 to deal with because I think everyone's agreed FAA is  
20 going to require something if you're going to build on  
21 that ridgeline, but no one has agreed as to what.

22 Their manuals are pretty clear. You know,  
23 you're talking about two red lights on top of every  
24 tower, lights on the wires. Whether or not there's  
25 striping, we don't know, but they are going to require

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1 something.

2 One of the options LCRA was looking at was  
3 lower towers to try and create less of an obstacle. It  
4 will still be an obstacle no matter what. But they were  
5 clear on their testimony. The lower towers they were  
6 thinking of means a double wide right-of-way they're  
7 going to have to take.

8 So everywhere in the study area you're  
9 looking at 100-, 140-foot wide right-of-way. But on  
10 this one loop, to deal with the perceived airport issue,  
11 you are talking about a 200-foot wide right-of-way.

12 So it's a heavier burden on the landowners  
13 than anyone else is being asked to shoulder in the study  
14 area. And our concern is, you could go through that  
15 whole process. You know, maybe it ends up as a  
16 contested case at the FAA. Maybe it doesn't, but it  
17 goes through all of their reviews, and even if you built  
18 it it's not going to be safe for the airport.

19 I've got at least a couple of my clients  
20 that will be talking about that later that wanted to  
21 address the Commission directly that have experience  
22 flying in and out of that airport and the planes going  
23 over their land every single day, and they are very  
24 personally concerned about that.

25 CHAIRMAN SMITHERMAN: So let me make sure



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1 I understand what you are saying, Rob. The proposed  
2 loop that the judge recommends around -- are you saying  
3 that that doesn't resolve the problem?

4 MR. JOHNSON: That's correct. By  
5 definition under the FAA regulations that creates an  
6 obstruction to aviation. The only question is, how will  
7 FAA address that obstruction? I'm a little bit  
8 surprised that LCRA didn't ask FAA to get some idea, to  
9 give some guidance to the Commissioners so we'd know  
10 what we were dealing with.

11 COMM. SMITHERMAN: Well, this is not the  
12 first time that LCRA has dealt with FAA, I'm sure.  
13 Ferdie, do you have a comment on this?

14 MR. RODRIGUEZ: Mr. Chairman, I do. I'm  
15 not even sure where to start. The problem -- and I  
16 respect Rob. We went around and around during the  
17 hearing and Bill as well.

18 CHAIRMAN SMITHERMAN: It sounds like this  
19 is not a new issue between the two of you.

20 MR. RODRIGUEZ: Not at all. Not at all.  
21 They're looking at it simply from the perspective of the  
22 FAA.

23 The only party that had a transmission  
24 engineer look at this from the perspective of how do you  
25 build a safe transmission line is LCRA. It's Mr. Symank

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1 who's sitting right here who's ready to talk if you'd  
2 like him to.

3           The problem south is not just an FAA  
4 problem. It is something more than that. If you can  
5 build something that -- as Mr. Johnson said, "Well,  
6 maybe the FAA will not complain." That's part 1. Part  
7 2 is, "Can you build it in a safe manner?" That's the  
8 part we can't get past. Mr. Symank is very clear. To  
9 build the line in such a way so it's tall enough to get  
10 over the river, and they're proposing that we cross the  
11 river three times -- three times. To get it tall enough  
12 to cross the river, you make it too tall. We now become  
13 the obstruction. That is not safe.

14           And to flatten the line, to get it low  
15 enough to even think about making it safe, now we're  
16 talking about exactly the kind of right-of-way that  
17 Mr. Johnson says we shouldn't be doing north; i.e.,  
18 flattening the line, spreading out the right-of-way to  
19 get it low enough to pass muster.

20           COMM. NELSON: Do you have to do that  
21 north as well?

22           MR. RODRIGUEZ: North? We have two  
23 obstructions. The obstruction is defined by two --  
24 well, by the first hill that we're not concerned with.

25           The second hill behind the first hill is

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1 the one that we're talking about with respect to the  
2 Part 77 surfaces. The Part 77 surface piercers the  
3 hill. The hill is the obstruction for Part 77.

4 The obstruction slope on the north side is  
5 defined by the first hill. It's a higher slope. The  
6 Part 77 is here; the obstruction slope is here. We're  
7 proposing to put it on the backside of that second hill,  
8 and if necessary we can go further back and further  
9 north into the property. If the FAA does think it's a  
10 problem, we can get it back further, get it down and  
11 that's not a problem. That's what our aviation expert  
12 testified to.

13 COMM. NELSON: To get it down further,  
14 does it have to have the 200-foot right-of-way?

15 MR. RODRIGUEZ: It depends. It depends  
16 how you design the --

17 COMM. NELSON: There's a potential?

18 MR. RODRIGUEZ: Possibly. But those are  
19 the techniques that you use when you consult with the  
20 FAA and they say, "Well, we would like for you to get it  
21 further back or we'd like for you to get it flattened."

22 We can do that just like we did with the  
23 Clear Springs to Hutto line when we went down SH-130 by  
24 Bergstrom. We're 6,000 feet away. That northern part  
25 that we're talking about here, we're almost two miles

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1 away -- almost 12,000 feet away.

2 COMM. ANDERSON: In looking at the large  
3 map, I see the -- and I want to make it clear. If you  
4 fly down, you're tracking -- what's that highway?

5 MR. NEIMAN: Highway 83.

6 COMM. ANDERSON: Highway 83. There's a --  
7 the line coming down is behind the hill even if you're  
8 coming -- even if you're flying down the highway. So,  
9 again, if I've read the material correctly, LCRA is  
10 proposing to have that line lower than the hill you have  
11 to clear to land coming to the south.

12 MR. JOHNSON: And I think it might be  
13 helpful to the Commissioners. I blew up LCRA's exhibit  
14 from -- that was admitted into evidence without  
15 objection.

16 This is the attachment to Mr. Symank's  
17 rebuttal testimony. For anyone scoring at home, it's  
18 Exhibit CDS6-REB. This is the cross-section of the  
19 hills north of the airport. That will probably make it  
20 easier to see.

21 That's one of the concerns that we have  
22 is, you know, my clients own the land on the b19  
23 segments and they have no idea what hill they're talking  
24 about tucking this line behind. The cross-section that  
25 they put into evidence doesn't show where they can hide

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1 a tower that it's not going to be sticking up above and  
2 be in the airspace.

3 And to clarify, our position and certainly  
4 for LCRA's benefit, we are certain, given the FAA  
5 regulations, that the north loop detour is a problem, is  
6 an obstruction to aviation. We think that there's an  
7 above-ground solution south of the airport, but we can't  
8 say for certain. Then looking at that, we go back to  
9 Kimble County's resolution, if you're not certain that  
10 you can be safe either north or south, then you need to  
11 look at a route somewhere else.

12 COMM. ANDERSON: That's fine, but let me  
13 go back to Ferdie. I'm a little frustrated, because  
14 you're not answering the question that I'm asking. And  
15 if I've got to ask it again, maybe I need to.

16 Assuming -- I understand your position  
17 about building a safe line. I understand that. I  
18 suppose I should have added an assumption. Assuming  
19 you're comfortable with the safety issue, would the  
20 general language about major -- more than minor  
21 deviations, to be technically correct -- give you the  
22 flexibility you need to route the line to the south?

23 I'm not -- now, if -- and assuming all the  
24 other hypotheticals which are that you get all landowner  
25 consent and if it involved city property in Junction for

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1 some reason -- Junction's consent -- that's all I'm  
2 really asking.

3 I'm not trying to site the line for -- I'm  
4 trying to avoid even having to deal with it in an order.  
5 I mean, I think it's a "yes" or "no" answer. If you  
6 want to qualify it by saying "assuming that -- that LCRA  
7 is comfortable with the safety aspect." That's a given.

8 MR. RODRIGUEZ: Commissioner, can I ask a  
9 question to clarify?

10 COMM. ANDERSON: Sure.

11 MR. RODRIGUEZ: Assuming that we could get  
12 comfortable somehow with the safety issue to the point  
13 where the engineers could even seal the plans -- and I'm  
14 not sure about this, but what happens if you can't get  
15 the consent of all involved?

16 CHAIRMAN SMITHERMAN: Then you don't do  
17 it.

18 COMM. ANDERSON: Then you don't do it.

19 MR. RODRIGUEZ: But what do we do then?

20 COMM. ANDERSON: You go back to the  
21 ordered route.

22 CHAIRMAN SMITHERMAN: I mean, we're going  
23 to pick a route. So that will be the one in the order,  
24 but the order will have language that says, "You've got  
25 some flexibility if you want to go a different way and

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1 you've got consent of all the landowners."

2 MR. RODRIGUEZ: I guess I would say this:  
3 If the order were written in such a way that the  
4 assumption is that the northern -- the b19 reroute is in  
5 the order and then we could try to work with folks  
6 south, we could try to do that.

7 COMM. ANDERSON: The reason I'm asking  
8 this question is, I read with great interest the  
9 replies -- the relies to your -- your replies to the  
10 exceptions --

11 MR. RODRIGUEZ: Yes, sir.

12 COMM. ANDERSON: -- where you go at great  
13 lengths talking about your experience with working with  
14 landowners, et cetera, to mitigate impacts, to thread  
15 needles, et cetera, et cetera.

16 MR. RODRIGUEZ: Yes.

17 COMM. ANDERSON: So I wanted to try to  
18 get -- and you also asked in those replies for the  
19 maximum flexibility --

20 MR. RODRIGUEZ: Yes, sir.

21 COMM. ANDERSON: -- which I'm inclined to  
22 give you to work with landowners. So my question was  
23 simply, in this context because -- Mr. Neiman --

24 MR. NEIMAN: Yes, sir.

25 COMM. ANDERSON: -- had said there was

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1 sort of a late -- perhaps late development and that some  
2 landowners are willing to take a line to the south  
3 voluntarily. And I don't know any of the topography,  
4 the -- any of that.

5 I just -- what I wanted to know is, in  
6 your opinion, assuming you met the criteria, that it was  
7 more direct, cost effective, consent of all the  
8 landowners so that that paragraph would give you the  
9 authority to deviate from the route we select which,  
10 under my hypothetical, would be the ALJs' route, which  
11 would include the loop to the north.

12 MR. RODRIGUEZ: There we go. In that  
13 case, I think the answer is "yes." What I would not  
14 want to end up with is -- I guess this is a Brazos  
15 situation -- where we end up with a gap, because maybe  
16 we end up with unnoticed landowners --

17 COMM. ANDERSON: No. That was never the  
18 premise of my question.

19 MR. RODRIGUEZ: Okay.

20 COMM. ANDERSON: But your answer and your  
21 caution is setting alarm bells off with me, because  
22 despite your assertions that you'll work with  
23 landowners, I'm concerned that perhaps you won't. Do we  
24 have to actually get very specific in this order dealing  
25 with every single landowner who has got a particular



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1 routing deviation?

2 I will be very unhappy -- very unhappy if  
3 that turns out to be the case.

4 MR. RODRIGUEZ: No.

5 COMM. ANDERSON: And I don't mean to be  
6 unpleasant about this, but I was trying to get some  
7 comfort so we could, one, to tell all landowners that  
8 once we pick a route, we've given LCRA flexibility, but  
9 I want to be comfortable before we pick that route that,  
10 in fact, you will use it.

11 MR. RODRIGUEZ: We would. I think we've  
12 exemplified that by what we call our Attachment 13 route  
13 modifications. There are over 100 where we bent over  
14 backwards to try to at least package them so that you  
15 could look at them and --

16 COMM. ANDERSON: And we're going to deal  
17 with some of those at some point in the meeting.

18 MR. RODRIGUEZ: We'll be glad to work with  
19 landowners. Where I thought we might end up with is a  
20 situation where you order us to look at this and it  
21 can't be done or we can't get it done and we end up with  
22 a gap.

23 COMM. ANDERSON: No.

24 COMM. NELSON: That's still a potential.  
25 I mean, there is not a -- the record is not clear.

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1 There is evidence on both sides of it with respect to  
2 that north loop the ALJ accepted, because two of the  
3 parties are saying that you still have to get FAA  
4 approval, which I don't think you are disputing --  
5 right -- even if you use the ALJ loop?

6 MR. RODRIGUEZ: We have to consult with  
7 the FAA. When you say "FAA approval," it's not as if  
8 the FAA will say, "Well, you can't build it." As we  
9 found out when we did Clear Springs to Hutto, they  
10 really don't even have enforcement action. But having  
11 said that, we work very well with the FAA. We do it all  
12 the time, and we don't have any doubt that we could work  
13 with the FAA to come up with an acceptable solution --

14 CHAIRMAN SMITHERMAN: And that's what the  
15 Judge believed, too.

16 MR. RODRIGUEZ: That's right.

17 CHAIRMAN SMITHERMAN: She believed in your  
18 testimony that you could work this out.

19 MR. RODRIGUEZ: That's right.

20 CHAIRMAN SMITHERMAN: And from my  
21 perspective, I believe it, too. I'm going to side with  
22 LCRA in this, because it's not your first rodeo when it  
23 comes to the FAA.

24 MR. RODRIGUEZ: That's right.

25 CHAIRMAN SMITHERMAN: So I think we've

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1 gone down a bit of a rabbit trail here.

2 MR. NEIMAN: I'm sorry. I may have --

3 CHAIRMAN SMITHERMAN: No, no. That's all  
4 right. We invited it. This happens. This is the kind  
5 of lawyer speak I would like to try to avoid. If it's  
6 okay with the two of you, I would like to try to get  
7 back to hearing from landowners -- from the Clear View  
8 Alliance landowners.

9 MR. NEIMAN: I would like to say, thank  
10 you very much for this extensive moment of time that  
11 you've allowed to me, and I also want to show a deep  
12 appreciation that the Staff has gone to great lengths to  
13 talk to our landowners and to understand what their  
14 deviations and their concerns might be.

15 No, I've had problems, for example, with  
16 this. I did not mean to earlier indicate that it was  
17 solely the Staff that was causing the obstruction.

18 CHAIRMAN SMITHERMAN: Mr. Neiman, who else  
19 would you like to speak on behalf of Clear View  
20 Alliance?

21 MR. NEIMAN: We have a list of  
22 approximately 10 others.

23 CHAIRMAN SMITHERMAN: Well -- and  
24 remember, you know, if somebody's already said what you  
25 were going to say, you don't have to get up and say it.

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1 Okay?

2 MR. NEIMAN: That's correct. I believe  
3 our landowners are hearing that same thing.

4 MR. RODRIGUEZ: Commissioner Anderson, did  
5 I answer your question, I hope, finally?

6 COMM. ANDERSON: Sure. I'm just a little  
7 frustrated, because I prefaced my question on assuming  
8 we select the ALJs' route. That included the northern  
9 route.

10 MR. RODRIGUEZ: I apologize if I missed  
11 that. Thank you.

12 MR. NEIMAN: Thank you.

13 CHAIRMAN SMITHERMAN: Thank you. Who's up  
14 first? Brad, who do you want to --

15 MR. BAYLIFF: We gave you a list, but  
16 Roybeth Savage would be happy to speak.

17 CHAIRMAN SMITHERMAN: Okay. Sure. Come  
18 on down.

19 MR. BAYLIFF: And we're trying to keep it  
20 on affected landowners and not policy and routing  
21 generally.

22 CHAIRMAN SMITHERMAN: Great. Please state  
23 your name, tell us where you live and --

24 MS. SAVAGE: I'm Roybeth Blackburn Savage.  
25 I live on the b23a connection right where the -- one of

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1 the two places that the poles would cross the river.

2 I am the one that is so singularly blessed  
3 that I have two pieces of property 40 miles apart, and  
4 the ALJs' preferred route has managed to clip me both  
5 places.

6 I'm working really hard not to feel picked  
7 on. The one I am especially concerned about is on the  
8 b88/b90 on the Fort McKavett Road 1674 just as you come  
9 out of AC Ranches.

10 CHAIRMAN SMITHERMAN: All right. Hold on.

11 COMM. ANDERSON: Is it b86 as opposed to  
12 88? I'm looking at the map.

13 MS. SAVAGE: It's right where the wide  
14 angle is.

15 COMM. ANDERSON: Yeah, b86.

16 MS. SAVAGE: I'm pretty much boxed in  
17 there.

18 COMM. ANDERSON: Ms. Savage, I think  
19 you're -- are you requesting that it be rerouted to  
20 follow the western and southern property boundaries and  
21 monopoles?

22 MS. SAVAGE: Initially, I did request  
23 that. I spent this week with realtors walking the land.  
24 And they've advised that there is less damage -- I can't  
25 use the word "better" -- to go with the route that they

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1 planned.

2 COMM. ANDERSON: Who's "they"? LCRA?

3 MS. SAVAGE: LCRA. No -- well, of course,  
4 LCRA for me particularly, but the Administrative Law  
5 Judges went the route. So I'm not requesting for those  
6 modifications at this point.

7 COMM. ANDERSON: So you're not. That's  
8 actually on my list. They were on the LCRA list of  
9 possible --

10 MS. SAVAGE: Right. Initially when I was  
11 called away from the land but I've been walking it, the  
12 realtors tell me that I will take about a 60 percent hit  
13 the day the lines are built and the value of the land.  
14 Since it is on two sides, I'm boxed in, and I'm begging.

15 CHAIRMAN SMITHERMAN: I think we've got  
16 your map up here. So let's just make sure. It looks  
17 like on your eastern boundary is 1674. Right?

18 MS. SAVAGE: That is correct.

19 CHAIRMAN SMITHERMAN: Now, does your  
20 property front right on 1674?

21 MS. SAVAGE: Yes, it does, and with a side  
22 entrance on County Road 23.

23 CHAIRMAN SMITHERMAN: I'm sorry?

24 MS. SAVAGE: With the side entrance on  
25 County Road 23.

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1 CHAIRMAN SMITHERMAN: Okay. So -- and so  
2 then the proposed line running from east -- from west to  
3 east would go along your northern boundary?

4 MS. SAVAGE: That is correct.

5 CHAIRMAN SMITHERMAN: How big is this  
6 piece of land?

7 MS. SAVAGE: 496 acres.

8 CHAIRMAN SMITHERMAN: And it looks like  
9 there's a habitable structure along the north line. Is  
10 that your house?

11 MS. SAVAGE: No. There is a habitable  
12 structure across the county road, and then there's --  
13 more in the middle of the property is the habitable  
14 structure.

15 CHAIRMAN SMITHERMAN: All right. So the  
16 one across the county road is not yours. That's your  
17 neighbor across the road.

18 MS. SAVAGE: No. It's an elderly couple  
19 who took all of their retirement money and bought these  
20 40 acres and put everything they had into it.

21 CHAIRMAN SMITHERMAN: All right. Did you  
22 say you had another piece of property as well?

23 MS. SAVAGE: Yes, where I live.

24 CHAIRMAN SMITHERMAN: Okay. And tell me  
25 where that is again.

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1 MS. SAVAGE: At the end of that airport  
2 loop where it crosses the Llano River right out my front  
3 window.

4 COMM. ANDERSON: Is that on the b23a?

5 MS. SAVAGE: Yes, sir, it is.

6 COMM. ANDERSON: Just as it crosses the  
7 Llano River?

8 MS. SAVAGE: Yes, sir.

9 CHAIRMAN SMITHERMAN: Go ahead, ma'am.

10 MS. SAVAGE: Have you found --

11 CHAIRMAN SMITHERMAN: Is there an existing  
12 transmission line there now?

13 MS. SAVAGE: Yes.

14 CHAIRMAN SMITHERMAN: How does that  
15 interface with your property?

16 MS. SAVAGE: It's just over the fence line  
17 into the neighbor's property. In the past 10 years I've  
18 seen all of that under water.

19 So, you know, it's in my Texas blood.  
20 It's hard to beg, but I've come today to beg. Please  
21 spare me one place or the other. When the first line  
22 came close to the homeplace, the place where I live, I  
23 thought, you know, "When I've had enough of looking at  
24 the lines, I can go out to the ranch; I can build a  
25 cabin."



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1                   That line was inserted last summer. So I  
2 have no place to run.

3                   CHAIRMAN SMITHERMAN: When you say, "that  
4 line was inserted last summer," this --

5                   MS. SAVAGE: That route.

6                   CHAIRMAN SMITHERMAN: This route.

7                   MS. SAVAGE: That route was inserted last  
8 summer because someone wanted the line. Below it, we  
9 don't want it.

10                   I've talked with my neighbors. I've  
11 talked with the community out there on the Fort McKavett  
12 Road. Many of them are elderly. They're ill. They  
13 can't come. They don't have the energy or the strength  
14 to be in the fight, but I've spoken with them this week,  
15 and they too are concerned about it.

16                   The road is so beautiful. You have the  
17 opportunity of knowing that the decision you render here  
18 will go forward to far beyond of what you've talked to  
19 your crystal ball years because these poles will be  
20 there for a long time.

21                   And when we go and we speak to our  
22 grandchildren, we can leave the world a better place.  
23 This is a beautiful area. And I try so hard not to feel  
24 picked on, but being two for two, it's hard not to. So  
25 I'm begging. And if this cup cannot pass from me, could

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1 it please have monopoles to be the least obtrusive?

2 CHAIRMAN SMITHERMAN: Well, we appreciate  
3 you coming.

4 MS. SAVAGE: Thank you so much for letting  
5 me speak.

6 CHAIRMAN SMITHERMAN: Thanks for being  
7 here.

8 MS. SAVAGE: Please.

9 CHAIRMAN SMITHERMAN: Brad, who's next?

10 MR. BAYLIFF: Believe it or not we have  
11 somebody who has property on I-10. Art Mudge would like  
12 to talk to you as well.

13 CHAIRMAN SMITHERMAN: All right.

14 MR. MUDGE: I'm Art Mudge. I'm a rancher  
15 in Kimble County. Like he said, I do live on I-10.

16 CHAIRMAN SMITHERMAN: Exactly where,  
17 Mr. Mudge?

18 MR. MUDGE: About seven miles west of  
19 Junction.

20 CHAIRMAN SMITHERMAN: Are you east or west  
21 of 1674?

22 MR. MUDGE: Well, we are north of it.  
23 There's 1674 that goes west of town.

24 COMM. ANDERSON: Are you on Y9 or --

25 MR. MUDGE: I think it's Y7b.

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1 CHAIRMAN SMITHERMAN: All right.

2 MR. MUDGE: You can narrow it down there  
3 between the Fort McKavett Road and the Cleo Road. We're  
4 in between those two. That will give you a general area  
5 to look.

6 Our family has been there for about six  
7 generations. The house we live in was built in 1891.  
8 It's been our ranch headquarters for the last 114 years.  
9 They built I-10 through there about 37 years ago. So we  
10 were there before the I-10.

11 One of the routes mentioned is, of course,  
12 the I-10 route. We live on the north side of I-10. Our  
13 house is less than 200 feet from the interstate  
14 right-of-way.

15 What I'm respectfully asking is that --  
16 well, let me state that we own the property on the south  
17 side of the interstate also. What we're asking is that  
18 if you could move that line to the south side of the  
19 interstate and also to use monopoles, because I have a  
20 defibrillator pacemaker.

21 My cardiologist, when I informed him of  
22 these metal lattice-type towers, he was very concerned.  
23 He said I must not get anywhere near those steel towers.  
24 Monopoles would not create as much a problem as the  
25 steel towers would. So what we are asking is two

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1 things --

2 CHAIRMAN SMITHERMAN: Hold on just a  
3 second. For you monopoles, are they steel or spun  
4 concrete?

5 MR. RODRIGUEZ: Mr. Chairman, they can be  
6 both. It depends. In some places you can't get the  
7 spun concrete.

8 CHAIRMAN SMITHERMAN: Because that's one  
9 piece.

10 MR. RODRIGUEZ: They are very heavy.

11 MR. MUDGE: I appreciate the opportunity  
12 to speak to you-all.

13 CHAIRMAN SMITHERMAN: How much land do you  
14 have on the south side of I-10?

15 MR. MUDGE: We have the land that extends  
16 from the right-of-way of the interstate to the river and  
17 on across the North Llano River and then another couple  
18 of miles south of that.

19 COMM. ANDERSON: So it would remain on  
20 your land?

21 MR. MUDGE: Yes, sir. It would be on our  
22 land, whether it was on the north side of the interstate  
23 or if it was on the south side.

24 In visiting with the LCRA -- I suppose it  
25 was an engineer -- I'm not sure -- just some of their

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1 staff -- when they became aware that we did own the land  
2 on both sides, they said, "Oh, yes. That's feasible.  
3 Just show us here on the map and, in fact, draw it where  
4 you would like for it to be."

5 COMM. ANDERSON: And, again, I think that  
6 under our standard ordering paragraphs, LCRA would have  
7 the authority to do that, because it would remain on  
8 your property.

9 MR. MUDGE: Yes, sir.

10 CHAIRMAN SMITHERMAN: Anything else, sir?

11 MR. MUDGE: No. That's it.

12 CHAIRMAN SMITHERMAN: Thank you.

13 MR. MUDGE: Thank you. I appreciate the  
14 opportunity.

15 CHAIRMAN SMITHERMAN: Next.

16 MR. BAYLIFF: Donna Schooley is not  
17 present today, but located on b84. She has testimony  
18 that was filed asking that you follow her property line.

19 COMM. ANDERSON: I'm sorry. What?

20 MR. BAYLIFF: B84.

21 COMM. ANDERSON: Her name again?

22 MR. BAYLIFF: Schooley, S-c-h-o-o-l-e-y.  
23 Part of a larger exhibit of several CVA intervenors who  
24 filed testimony supporting a CVA decision for all of the  
25 intervenors, but she had specific testimony that she

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1 wished to request modification and following her  
2 property lines rather than bisecting B84 to b86 go from  
3 northwest to southeast and to meet the needs of AC  
4 Ranches and the place that it wanted but other property  
5 owners in that area are affected.

6 Ms. Schooley is one of those and it goes  
7 diagonally across her property instead of following the  
8 property lines.

9 There are at least two other property  
10 owners that would be affected by that. Cora McGowan is  
11 one of those and Caroline Runge. Caroline was back over  
12 there. Would you still like to speak? Okay. Caroline  
13 Runge, R-u-n-g-e.

14 MS. RUNGE: Mr. Chairman, Commissioners,  
15 my name is Caroline Runge. Our ranch is located at the  
16 very beginning. We're right across Highway 277 from the  
17 substation where the Line b5b joins with b14a.

18 CHAIRMAN SMITHERMAN: Okay.

19 MS. RUNGE: Since we are right across the  
20 road from the substation, we're actually the second  
21 landowner past the substation, all of the proposed  
22 routes except the one to El Dorado go across our  
23 property.

24 We, of course, would be thrilled if you  
25 would choose the route down 277 and avoid our property

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1 entirely. But from early on, we've been pretty  
2 realistic that that probably wasn't going to happen,  
3 that it's going to save the LCRA, you know, 40 to  
4 \$50 million to shortcut across our ranch.

5 What we would like to ask is that we be  
6 given some consideration in having the line across our  
7 ranch moved. I've met frequently with both the LCRA and  
8 PUC Staff making this request.

9 It's embodied in Runge 4 Segment  
10 Modification on Page 74 of Supplement 1 to Attachment  
11 13. The reason I'm taking up your time today is, the  
12 last time I met with the LCRA they said that they didn't  
13 have any discretion in deciding these routes, that  
14 you-all would decide the route.

15 Now I understand from what you say today  
16 that they do have some discretion, but we feel a little  
17 uncomfortable in view of what you've said today that  
18 they don't want to exercise it.

19 COMM. NELSON: Well, there's some language  
20 in the order that we're proposing that limits their  
21 discretion insofar as it increases the cost by a  
22 certain --

23 COMM. ANDERSON: Let me ask this question,  
24 because I'm familiar with your request, because LCRA did  
25 package this up. So Staff has been looking at some of

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1 this and getting information.

2 I gather you have sort of two requests, or  
3 it's been broken up for my evaluation purposes into two  
4 requests. One is that b14a be moved west to follow your  
5 west property line.

6 MS. RUNGE: Correct.

7 COMM. ANDERSON: And that the point where  
8 b14a enters your property, it be moved further south to  
9 avoid entering the property on top of the hill.

10 MS. RUNGE: And if I could explain.

11 COMM. ANDERSON: Now, but you're not  
12 suggesting it move off your property?

13 MS. RUNGE: No. We're not suggesting it  
14 move off the property. We fully accept having it on our  
15 property, but we do want that point where it comes onto  
16 our property moved south, because it comes onto our  
17 property right on top of the hill right opposite the  
18 front porch of our house, and it would be terribly  
19 visible.

20 But if it were moved 1,000 feet south,  
21 that would be below the edge of that hill. It would  
22 still stick up quite a bit above the hill, but it  
23 wouldn't be just extremely obtrusive. I mean, right now  
24 it's located directly off the porch and directly into  
25 the sunset.



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1 I mean, we have a lot of gatherings on our  
2 porch. We've had this ranch -- this part of our ranch  
3 has been in the family only for 88 years, but we  
4 actually make our living on this ranch. It's not  
5 recreational property. Unlike a lot of Schleicher  
6 County people, we don't have oil income. We make our  
7 living strictly off of cattle and sheep and goat  
8 operations.

9 You know, we know every blade of grass on  
10 that place. It's extremely upsetting to us to think  
11 about having this large obtrusive tower just off our  
12 front porch.

13 COMM. ANDERSON: Just so you know, so long  
14 as all the deviations remain on your property, at least  
15 the two that's before me -- again, remain on your  
16 property -- I was inclined to actually provide that your  
17 request was to be respected.

18 MS. RUNGE: Well, we would be very  
19 grateful, yes.

20 COMM. ANDERSON: But that doesn't buy my  
21 colleagues. We're going to discuss all of these later.

22 MS. RUNGE: No. But -- I mean, we would  
23 be very grateful to all of you. Yes, we are all right  
24 with it remaining on the property, but we really want it  
25 to go down the fence line instead of cutting diagonally

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1 across the pasture.

2 And also -- I don't know that it's very  
3 clear in here, but if it goes diagonally across the  
4 pasture, our hunters' cabins would have to be moved. We  
5 don't have a really good place to move them to because  
6 of the shortage of water on the property. So we would  
7 be very grateful if we could have that written into the  
8 order on the final decision.

9 CHAIRMAN SMITHERMAN: Thank you, ma'am.

10 MR. BAYLIFF: Cora McGowan is also --

11 COMM. ANDERSON: Sorry. Her first name?

12 MR. BAYLIFF: Cora McGowan. I don't  
13 believe you have anything from her. She actually wasn't  
14 a party, but is a relative of some of the people who are  
15 involved with Clear View.

16 And while I have a moment, I want to make  
17 clear that the discussion earlier about the Staff and  
18 the settlement discussions or the routing discussions  
19 with LCRA, Staff was very cooperative with us and did  
20 work with us.

21 If you will remember, 38140 happened with  
22 a settlement agreement, and that sort of stopped a lot  
23 of settlement discussions right at the time that we were  
24 trying to get Staff to help arrange something with LCRA,  
25 and I think the problem may have been more in the LCRA

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1 availability rather than Staff's willingness to  
2 cooperate, and I didn't want any misperception that  
3 Staff was uncooperative.

4 CHAIRMAN SMITHERMAN: We got it.

5 MR. BAYLIFF: Thank you.

6 CHAIRMAN SMITHERMAN: Tell us your name  
7 again, ma'am.

8 MS. MCGOWAN: Cora McGowan.

9 COMM. ANDERSON: Is it McGowan or McAllen?

10 MS. MCGOWAN: McGowan, M-c-G-o-w-a-n.

11 CHAIRMAN SMITHERMAN: G-o-w-a-n?

12 MS. MCGOWAN: Yes. My ranch is in  
13 Schleicher County, and it's just northwest of the AC  
14 Ranches. So this new line that was recommended I  
15 believe in October affects me.

16 COMM. ANDERSON: What link are you on?

17 MS. MCGOWAN: MK15. B84.

18 CHAIRMAN SMITHERMAN: 84? But you are not  
19 a party. Right, ma'am? You're not a party to the  
20 proceeding? Brad, she's not a party?

21 MS. MCGOWAN: I'm an intervenor.

22 MR. BAYLIFF: You are?

23 MS. MCGOWAN: Yes.

24 MR. BAYLIFF: I apologize.

25 MS. MCGOWAN: I did. I did.

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1                   COMM. NELSON: We were going by what Brad  
2 said, that you were not. So...

3                   MS. MCGOWAN: No, I did.

4                   CHAIRMAN SMITHERMAN: Shannon?

5                   MS. McCLENDON: Thank you. Shannon  
6 McClendon for AC Ranches. Did she file testimony or a  
7 statement of position?

8                   MR. BAYLIFF: She did not file testimony.  
9 She did file a statement of position.

10                  MS. McCLENDON: I just needed that  
11 clarified.

12                  CHAIRMAN SMITHERMAN: Go ahead, please.

13                  MS. MCGOWAN: Well, I was never contacted  
14 by AC Ranches on wanting this line. I hope it doesn't  
15 really affect your decision in that someone would profit  
16 privately from this line. To add to Caroline Runge's,  
17 our ranchland has been in the family for over 130 years.

18                         You know, we do care about our land.  
19 We're good stewards of our land. The other route that  
20 the LCRA proposed runs right by my sister's house and  
21 she's going to speak to that.

22                         We would prefer it went down 277 and I-10  
23 with monopoles if possible.

24                   CHAIRMAN SMITHERMAN: So I've got a map  
25 behind me that has b84 which is the one you're on.

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1 Right?

2 MS. MCGOWAN: Yes, between Donna Schooley  
3 and AC Ranches.

4 CHAIRMAN SMITHERMAN: You're north of AC  
5 Ranches. Correct?

6 MS. MCGOWAN: Yes, sir. 864 runs right in  
7 front of my entrance.

8 CHAIRMAN SMITHERMAN: And did you -- like  
9 some of the other folks who have spoken, did you propose  
10 to LCRA some modifications if the line is going to go  
11 across your property?

12 MS. MCGOWAN: Yes.

13 CHAIRMAN SMITHERMAN: You've done that?

14 MS. MCGOWAN: Yes, sir.

15 CHAIRMAN SMITHERMAN: I don't think I saw  
16 it.

17 COMM. ANDERSON: I don't think I've seen  
18 it either. What were the modifications?

19 MS. MCGOWAN: Well, we asked for  
20 monopoles, and we have an existing pipeline that goes  
21 across the ranch. It can go near that area.

22 COMM. ANDERSON: So you wanted it to  
23 parallel a pipeline?

24 MS. MCGOWAN: Yes, please. That's already  
25 a cleared area through the ranch.

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1 CHAIRMAN SMITHERMAN: Ferdie?

2 MR. RODRIGUEZ: We don't have  
3 Ms. McGowan's proposed adjustment on our list.

4 COMM. ANDERSON: Yeah, I don't see it.

5 CHAIRMAN SMITHERMAN: Yeah, I didn't see  
6 it either. Well, maybe that's something we -- you need  
7 to get with them and --

8 MS. MCGOWAN: Okay.

9 CHAIRMAN SMITHERMAN: -- depending on what  
10 we do. Davida, did you get a clarification on her  
11 status?

12 MS. DWYER: I can't find her in the search  
13 for AIS or on our party spreadsheet. She is on the  
14 noticed spreadsheet. I'm still looking to see if it was  
15 buried within some --

16 CHAIRMAN SMITHERMAN: Okay. Any questions  
17 further of Ms. McGowan? Thank you for being here.

18 MS. MCGOWAN: Thank you.

19 COMM. ANDERSON: Again, unless LCRA tells  
20 me they don't think that's how they read it, I think  
21 this would -- there are a couple of solutions. One is  
22 we could direct -- we could make it explicit. But it  
23 also sounds like this might fall into the minor --  
24 almost minor deviations because it's on your property  
25 and there's already a right-of-way that -- I mean,

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1 you're just asking them to move it on your -- where it  
2 goes on your property.

3 MS. MCGOWAN: Yes.

4 CHAIRMAN SMITHERMAN: Well, paralleling  
5 existing right-of-ways is one of our objectives.

6 COMM. ANDERSON: That's one of the  
7 objectives.

8 CHAIRMAN SMITHERMAN: Okay. Ma'am, thank  
9 you.

10 MS. MCGOWAN: Thank you.

11 MR. BAYLIFF: Unless I'm not aware of  
12 others, I've stricken three from your list,  
13 Mr. Chairman, and I'm only aware of two others -- Gavin  
14 Stener and Ward Whitworth. Both of them are in the area  
15 of -- in the routing around Junction in the north  
16 detour.

17 Mr. Stener would like to go first, and  
18 he's also a pilot who's flown into that airport and has  
19 concerns about the things that have been discussed, and  
20 then Mr. Whitworth will briefly discuss things as well.  
21 He's on Y8.

22 MR. STENER: Thank you very much,  
23 Commissioners, for hearing a little bit of information  
24 from me.

25 COMM. ANDERSON: State your name again for

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1 the record.

2 MR. STENER: My name is Gavin Stener. I'm  
3 a party to the case or the docket with CVA. I'm a small  
4 landowner with property in Kimble County. I'm a private  
5 pilot, and I'm definitely potentially impacted by b19b  
6 that runs north of the airport.

7 COMM. NELSON: You sound a little bit like  
8 you're a native Texan.

9 (Laughter)

10 CHAIRMAN SMITHERMAN: I guess an  
11 Australian.

12 MR. STENER: It took me a while to get  
13 here, England and Australia.

14 CHAIRMAN SMITHERMAN: Well, welcome.

15 MR. STENER: Thank you very much.

16 CHAIRMAN SMITHERMAN: We like you.

17 MR. STENER: Thank you.

18 COMM. NELSON: It took me a while to get  
19 here, too.

20 CHAIRMAN SMITHERMAN: She came almost as  
21 far.

22 (Laughter)

23 MR. STENER: Where from?

24 COMM. NELSON: South Dakota, but I've been  
25 here for 30 years. I think I've earned my Texas wings.



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1 MR. STENER: Sixteen for me. I'll try and  
2 keep this as brief as possible. There's some other  
3 landowners here that I'm actually adjacent to that will  
4 become relevant. That's Trey and Jill Whichard.  
5 They're part of the Segrest group.

6 But I was interested by the reference --  
7 and I wasn't planning to speak. So I don't have all my  
8 notes here. But I saw the memo that came out yesterday  
9 with respect to going north of the airport and,  
10 therefore, I wanted to speak.

11 There's very often times when there's --  
12 in the summer months you have north winds coming through  
13 Kimble County Airport. These are a very dangerous  
14 situation. Part of the reason for that is to do with  
15 density of the air.

16 So in summer months the air is hotter.  
17 It's thinner. Anybody who's a pilot -- Bill or anybody  
18 else -- would understand that trying to get lift is very  
19 difficult. There have been a number of incidents  
20 involving pilots leaving to the north of the airport in  
21 the summer months.

22 And actually on the hills above Kimble  
23 County there was in 2005 -- it's not a matter of the  
24 record. No one has entered this into the record, but I  
25 would like to speak about it. There was a small general

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1 aviation aircraft that actually went down very close to  
2 the proposed line -- b19b -- and actually went down on  
3 Trey Whichard's property about half a mile from where my  
4 house is.

5 That wasn't piloted by a low-time pilot.  
6 That was an airline pilot. He could not get enough  
7 lift. I ask you to consider that on behalf of pilots  
8 that will be using it, especially transient pilots.

9 I raised this issue in the spring of 2009  
10 with the LCRA. It was largely ignored. I then filed a  
11 number of motions or -- they're probably not motions,  
12 but I filed a number of freedom of information act  
13 requests.

14 Probably nobody in room except Ferdie  
15 knows this, but he battled me all the way to the  
16 Attorney General of Texas to prevent me knowing what  
17 they had and had not discussed with the FAA. That was a  
18 clear intent that they really weren't listening to  
19 landowners and concerns.

20 I have approached the FAA. I was the one  
21 who did the original work for the intrusion of towers on  
22 the top of the hill, and I produced that and provided  
23 that to the LCRA. I could go on and on. I won't. I'll  
24 afford everybody else the time.

25 FROM THE AUDIENCE: Commissioners --

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1 Mr. Stener, I apologize, but I had a hard time hearing  
2 back there in the back. But did I hear correctly that  
3 none of this was introduced in the record at the trial  
4 on the merits?

5 Did I hear you say that, sir? I mean, I'm  
6 having a hard time hearing you.

7 MR. STENER: I apologize. What I was  
8 saying was the --

9 COMM. NELSON: We're smart enough to be  
10 able to distinguish between stuff. We can hear him and  
11 he said it was not.

12 FROM THE AUDIENCE: I apologize.

13 COMM. NELSON: But I would be willing to  
14 bet that it's in the public record if there was an  
15 airplane that crashed in 2005.

16 MR. STENER: It is available in the NTSP.  
17 It is available and it was not entered into the record.  
18 As an intervenor, one has limited capacity to introduce  
19 relevant material, which is why I tremendously  
20 appreciate this opportunity.

21 From a pilot's perspective and from a  
22 father's perspective as someone who uses this airport,  
23 you have the potential of having the loss of life in the  
24 event that you build these towers north of the airport.

25 There is material out there through the

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1 NTSP records and everything else of the number of  
2 aircraft that get strung in transmission lines. I am  
3 well aware of the work with the LCRA, what they did  
4 around Bergstrom, because I am working with AOPA and  
5 various other parties that should the LCRA approach the  
6 FAA and the obstruction group we will tackle this,  
7 because this is inappropriate when there are alternates  
8 to the south of the airport -- legitimate alternatives.

9 So partly because I'm dry, I'm going to  
10 answer any questions you may have and pass time to  
11 others.

12 CHAIRMAN SMITHERMAN: Thank you for  
13 coming. Appreciate it.

14 MR. BAYLIFF: Thank you, Mr. Chairman.  
15 Unless there are others who are participants with CVA  
16 and assigned CVA to represent them, I have only one  
17 other person and the others may be either in this room  
18 or in the overflow rooms, but Ward Whitworth is the last  
19 person.

20 I much appreciate your willingness to  
21 consider this, and I would respectfully listen to the  
22 other people.

23 CHAIRMAN SMITHERMAN: What was your name,  
24 sir -- the last gentleman?

25 MR. STENER: My name is Gavin Stener,

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1 S-t-e-n-e-r.

2 CHAIRMAN SMITHERMAN: Got it. Thank you.  
3 Yes, sir?

4 MR. WHITWORTH: Yeah. I'm Ward Whitworth.  
5 I'm an intervenor with CVA. I did provide written  
6 testimony. Thank you for the opportunity to speak.

7 COMM. ANDERSON: Where's your property?

8 MR. WHITWORTH: I've got multiple  
9 properties that are affected. I have property on the  
10 LCRA preferred route, as well as on the I-10 route.

11 CHAIRMAN SMITHERMAN: Where on I-10?

12 MR. WHITWORTH: West of Junction; just  
13 east of FM 2291 in the area where the --

14 COMM. ANDERSON: So you're on Y --

15 MR. BAYLIFF: 8.

16 MR. WHITWORTH: Y8, the northern go-around  
17 area there as well. Just a few comments. This is a  
18 family-owned property in both areas. We were there  
19 as -- one of my neighbors spoke earlier -- before I-10  
20 came and before 1674 came.

21 So that property has actually been cut, I  
22 think, three times by public highways. From a landowner  
23 looking at the interstate, there were comments earlier  
24 about the beauty of I-10. We thought it was just fine  
25 before I-10.

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1 (Laughter)

2 MR. WHITWORTH: And, you know, if we're  
3 going to have a transmission line, we'd just as soon it  
4 stayed by I-10 as cut through some other property and  
5 cut a new right-of-way somewhere else.

6 And along those same lines with I-10 --  
7 I'm sure everyone is aware -- but I would remind them.  
8 Out in our part of the world there's a lot of truck  
9 traffic. It does paint it as more of an industrial-type  
10 pathway there, and it's also -- the trucks can't do it  
11 but everybody else can legally travel 80 miles an hour.

12 So we hope that people aren't enjoying our  
13 natural beauty too intently as they travel through  
14 there.

15 (Laughter)

16 CHAIRMAN SMITHERMAN: The last time I  
17 drove through there, if you're doing 80 you're going to  
18 get run over.

19 COMM. ANDERSON: Here, here.

20 MR. WHITWORTH: Yeah. You better get in  
21 the right lane. That's the general gist of things. I  
22 would follow up with some comments about the monopolies  
23 and say that they're much preferred. Whoever gets this  
24 line, I pray that they get monopolies on them, whether  
25 it's us or others.

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1           And I would say that since this process  
2 began, our property that's in the LCRA preferred route  
3 area, we view the private line up there from that.

4           CHAIRMAN SMITHERMAN: You can see it?

5           MR. WHITWORTH: I can see it.

6           CHAIRMAN SMITHERMAN: It's not on your  
7 land, though?

8           MR. WHITWORTH: It's not on my land, but  
9 from a point on my land I can probably see about six  
10 miles of it.

11           And then to access another property I  
12 drive underneath it, and I've come to accept it. In  
13 looking at other transmission lines throughout the  
14 state, I've come to appreciate that power line.

15           I would hope that you would try to model  
16 any new lines similar to it, because it's not as  
17 offensive as a lot of other lines are, even other  
18 monopole lines. So I would ask for the Commission to  
19 try to use monopoles as much as possible throughout the  
20 whole line.

21           CHAIRMAN SMITHERMAN: Let me just comment  
22 on that because I've driven underneath that line a  
23 couple of times. As you know, that was not built to any  
24 of our standards or -- I don't know if it's built to  
25 ERCOT standards or what, but it's my understanding it's

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1 a single circuit.

2 I think it has arms on -- two arms on one  
3 side and one arm on the other side if I'm recollecting.  
4 It's not very tall. It's kind of squatty. And in many  
5 ways it's quite -- I won't say it's aesthetically  
6 pleasing, but it has its advantages.

7 The right-of-way seems to be awfully  
8 narrow, too. I don't know how much right-of-way they  
9 secured, but in some places it looks like to me it's 30  
10 or 40 feet. It's probably more than that. You know,  
11 the challenge is, when we're building transmission that  
12 we're going to put in rate base, you know, we have to go  
13 by certain standards of reliability and safety.

14 I don't know if that private line has any  
15 of those or not, but it gives the illusion, I think, to  
16 some people, "Well, if I've got to have one, I want it  
17 like that."

18 COMM. NELSON: So one company built that  
19 and paid for it and it was not -- the cost was not  
20 uplifted to all the ratepayers in ERCOT.

21 MR. WHITWORTH: I'm sure. I'm just  
22 encouraging you to consider that, if you could. You  
23 know, as this all first began, when we had public  
24 meetings, the issue with the lattice towers versus  
25 monopoles was brought up.



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1                   From a landowner perspective, it was a  
2 little bit unpalatable that expense uses the issue of,  
3 you know, it's an expense issue. Well, we feel like  
4 you're taking a lot away from our property and damaging  
5 it. And when you're using lattice poles versus -- or  
6 lattice towers versus monopoles, it's a little bit of an  
7 insult saying, "Well, we really don't care what it's  
8 going to do to the value of your property," is kind of  
9 the message that it feels like we're getting.

10                   CHAIRMAN SMITHERMAN: Yeah, I can  
11 understand your position. That's not what the message  
12 is intended to be, because -- and this was mentioned  
13 earlier and I started to say something at the time --  
14 you know, everybody in most of Texas in the ERCOT region  
15 pays for this transmission.

16                   It's not LCRA that is paying for it. They  
17 get their money back. So I think that their concern and  
18 rightfully so that managing cost is a worthy objective.  
19 I know that this commission and other commissions that  
20 have predated us have put a high value on cost because  
21 everybody pays for it.

22                   People in Houston are going to pay for it.  
23 People in the Valley; other people throughout ERCOT are  
24 going to pay for this because we uplift the cost to  
25 everybody. And at least according to their

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1 calculations, monopoles are more expensive and you have  
2 to use more of them because you can't span as far.  
3 So -- hey, they don't care. I mean, if we tell them to  
4 do it, they'll do it. It's not their money, but it is  
5 everybody else's money.

6 MR. WHITWORTH: Well, certainly. It's the  
7 landowner's burden. I'm just trying to encourage you to  
8 shift as much of the burden to the ratepayers and away  
9 from the landowners as possible by that action.

10 CHAIRMAN SMITHERMAN: Well, here's your  
11 man right here.

12 (Laughter)

13 MR. WHITWORTH: And that's the bulk of my  
14 comments. I would say that this is the first meeting  
15 I've been to, and the Commission certainly impressed me  
16 with their level of knowledge and detail of all that's  
17 going on here, and appreciate you hearing me.

18 COMM. ANDERSON: Just to make sure I have  
19 your position, your principal point in addition to  
20 supporting any of it that can be done along I-10 is that  
21 any of it that can be monopolized you're in favor of as  
22 well? Those are the two points?

23 MR. WHITWORTH: Right. I tend to prefer  
24 it over the LCRA route and --

25 COMM. ANDERSON: The LCRA preferred route?

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1 MR. WHITWORTH: Correct. And I'm for  
2 monopoles for wherever the route goes.

3 COMM. ANDERSON: Like the Chairman is  
4 already on the record as leaning that direction or at  
5 least for a significant part of it.

6 CHAIRMAN SMITHERMAN: Well, at some point  
7 we're going to have a dialogue here about what effect,  
8 if any, do we give to that private transmission line,  
9 because I think it raises some interesting policy  
10 issues.

11 Our rules say that we should try to take  
12 advantage of existing rights-of-way. The rule is not --  
13 is not worded exactly as some people believe it is. It  
14 says "compatible rights-of-way including the use of the  
15 open side of an existing transmission tower."

16 But now we have -- in this study territory  
17 we have a private line negotiated between a private  
18 company and private landowners that suddenly may become  
19 a route that is deemed to be a compatible right-of-way  
20 for putting another line next to it.

21 I don't know if there's a distinction  
22 there or not. I'm looking forward to what my colleagues  
23 have to say about it. But I'm somewhat sympathetic to a  
24 landowner who may say, "I didn't want that private line  
25 on my property and, therefore, I didn't negotiate to put

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1 it on and I didn't get any of the money. My neighbor  
2 did. And now because of my neighbor's actions -- not  
3 the action of some government -- my neighbor's actions,  
4 I run a higher risk of having this new line on my  
5 property." I'm waiting on these guys to tell me what  
6 they think about this.

7 (Laughter)

8 COMM. ANDERSON: I'll wait till we get to  
9 that point.

10 (Laughter)

11 CHAIRMAN SMITHERMAN: Thank you for  
12 coming.

13 MR. WHITWORTH: Thank you very much.

14 MR. BAYLIFF: For all my disputes with  
15 LCRA in this and Mr. Symank (inaudible) I'll commend his  
16 testimony that does talk about monopolies, and the larger  
17 use of monopolies actually reducing the cost to much less  
18 than originally was thought discussed.

19 This was an exhibit with Jonathan  
20 (inaudible) testimony. It is a viewscape that shows the  
21 LCRA preferred route coming from up here in McCamey D  
22 and coming down towards Kendall, and I was shocked to  
23 see how much of the hill country area in that preferred  
24 route area one could see the preferred route.

25 You can come almost all the way up to

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1 Menard and Mason and be able to see parts of the  
2 preferred route in one part of the study area, and that  
3 was one of the things as we were putting everything  
4 together it was a big surprise. That's the reason a lot  
5 of people are concerned about this. It will be visible  
6 to a number of people throughout the hearing.

7 I'm not aware of any other CVA intervenors  
8 who have an interest or desire to speak to you. We much  
9 appreciate this opportunity and thank you very much.

10 CHAIRMAN SMITHERMAN: You're welcome. Why  
11 don't we move on now. I know we have some folks from  
12 Tierra Linda who wanted to speak. Do you have a --  
13 there's a bunch of you here. So don't all of you queue  
14 up. Okay? But if you've got some designated  
15 representatives...

16 MR. BAYLIFF: And there's several of us  
17 who are willing to go to the overflow room to allow --

18 CHAIRMAN SMITHERMAN: Great. Thank you.  
19 You know, that's a great idea. If you've already said  
20 your piece, go to the overflow room and let somebody  
21 who's standing have your seat.

22 I tell you what, why don't we take a  
23 five-minute break while everybody is moving in and out.  
24 If you've got a card, give it to Will, please, the Court  
25 Reporter. Right now he's trying to phonetically get all

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1 your spellings.

2 (Recess: 2:17 p.m. to 2:26 p.m.)

3 CHAIRMAN SMITHERMAN: Okay. Let's go back  
4 on the record, please. We're going to hear from  
5 representatives for the Tierra Linda development. Sir?

6 MR. STRACKE: Thank you very much. I come  
7 here --

8 CHAIRMAN SMITHERMAN: Your name, please,  
9 sir.

10 MR. STRACKE: I'm sorry. Bruce Stracke,  
11 S-t-r-a-c-k-e. I come here as the board president of  
12 the Tierra Linda Ranch Homeowners' Association. It  
13 represents 233 individual intervenors with combined  
14 testimony that was signed by myself.

15 With me today -- there are six  
16 directly-affected homeowners that I'm aware of that wish  
17 to address you. They waited six months, and I cannot  
18 tell you how much we appreciate the opportunity to come  
19 before you today and do that.

20 And just in a little bit of association, I  
21 really feel like we've always been kind of the  
22 red-headed stepchild in this docket. We didn't have the  
23 resources to hire a PUC attorney or someone who  
24 specializes in that, and we have because of our  
25 community, because of the willingness of these folks to

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1 ban together and do their own efforts and their own  
2 research and work have tenaciously stayed in this fight  
3 to make their voice be heard so that they would at least  
4 know that when you made a decision you knew what our  
5 opinion was.

6 I can't tell you how grateful we are for  
7 you allowing us that opportunity. But having said that,  
8 I would like to invite Buzz Kerr up. He lives on a  
9 property that faces directly the right-of-way on Segment  
10 b56 and would like to share his comments with the  
11 Commission. Thank you.

12 CHAIRMAN SMITHERMAN: So, Mr. Stracke,  
13 before you do that, I want to make sure I have a good  
14 understanding of this neighborhood, because the map that  
15 was filed as part of your testimony, this was one of  
16 them.

17 Does this look familiar to you?

18 MR. STRACKE: Yes, sir.

19 CHAIRMAN SMITHERMAN: And it looks like  
20 from this map that the proposed transmission line would  
21 go down an existing gas line right-of-way.

22 MR. STRACKE: That's correct, sir.

23 CHAIRMAN SMITHERMAN: Okay. Like I'm sure  
24 everyone in the room did, I went to Google maps. It's  
25 an amazing technology. I focused in on -- in particular

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1 on Tierra Linda and on this right-of-way. So a couple  
2 of questions.

3 One is, is this a park on the eastern side  
4 of this right-of-way?

5 MR. STRACKE: Yes, sir, Rocky Point Park.  
6 It's part of our parks and trail system, all part of the  
7 community property that the ranch owns through the  
8 homeowners' association.

9 CHAIRMAN SMITHERMAN: So describe the park  
10 for me a little bit.

11 MR. STRACKE: That particular park is up  
12 on the -- that particular area is part of the divide  
13 between the Pedernales and the Guadalupe River  
14 watersheds. So it's some of the higher land in  
15 Gillespie County. That particular park is one of the  
16 higher points on the ranch and is at the eastern edge of  
17 one of our horse riding trails, the trail we often use  
18 for sunset rides and such.

19 CHAIRMAN SMITHERMAN: It looked like from  
20 Google Maps that there was some sort of right-of-way  
21 running from south to north or north to south along this  
22 eastern edge of the development. It could have been a  
23 fence line. It could have been a distribution line.

24 MR. STRACKE: I believe it's just a fence  
25 line. We don't have any north and south running --



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1 CHAIRMAN SMITHERMAN: Okay. Now, this gas  
2 line, I think from the testimony it was described as an  
3 older gas line right-of-way. Do they still come through  
4 and maintain the right of way and clear this thing out,  
5 or what sort of maintenance goes on there?

6 MR. STRACKE: I'm not aware of the  
7 pipeline organization coming through and doing any  
8 maintenance.

9 CHAIRMAN SMITHERMAN: Maybe one of the  
10 landowners there can --

11 MR. KERR: Aerial.

12 CHAIRMAN SMITHERMAN: Aerial inspection  
13 or --

14 MR. KERR: Aerial inspection.

15 CHAIRMAN SMITHERMAN: What about actual  
16 on-the-ground --

17 MR. KERR: I've never seen a vehicle on  
18 the right-of-way.

19 CHAIRMAN SMITHERMAN: Just for the record,  
20 say your name, sir.

21 MR. KERR: My name is Buzz Kerr. I live  
22 in Tierra Linda at 40 West Lacey, Oak Parkway, the  
23 street just north of the right-of-way.

24 CHAIRMAN SMITHERMAN: Okay. Then in terms  
25 of the number of homes that would be -- I'm going to say

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1 "directly affected" -- I know that everyone who can see  
2 this or would drive under it believes them to be  
3 affected. The number of lots that looks like would be  
4 affected is somewhere in the neighborhood of -- what --  
5 10, a dozen?

6 MR. STRACKE: I believe there are 15  
7 actual --

8 CHAIRMAN SMITHERMAN: 15?

9 MR. STRACKE: -- habitable structures, and  
10 there are a number of lots who haven't been built on  
11 yet. In fact, some folks have been waiting to build to  
12 find out what's happening here on this particular  
13 docket.

14 CHAIRMAN SMITHERMAN: So I think we count  
15 12. I think the map shows 12 habitable structures  
16 within the 500-foot right-of-way.

17 MR. STRACKE: There are other documents.  
18 There's one document from the LCRA that had 14, and I  
19 can't remember which, but I thought there was another  
20 document that had 15. So you're right. I've seen three  
21 different numbers -- 12, 14 and 15.

22 CHAIRMAN SMITHERMAN: And what's the  
23 average size of these properties?

24 MR. STRACKE: They're probably about six  
25 acres.

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1 CHAIRMAN SMITHERMAN: Even in this area of  
2 where the transmission line would go?

3 MR. STRACKE: Yes, sir. There is on  
4 the -- to the northwestern side there may be a couple of  
5 properties that flag a bit and might be a little --  
6 slightly larger than that. But in general I would say  
7 they're all about six acres. You-all have six, you-all  
8 have six. I have six. So they're about six acres.

9 MR. KERR: They're six to 10.

10 CHAIRMAN SMITHERMAN: Now, you-all don't  
11 talk at the same time, because Will can't get that. And  
12 is this a municipal utility district? How is your water  
13 and sewer supplied? Is it through the city or --

14 MR. STRACKE: No. It's not a municipal --  
15 there are no municipal utilities. The ranch has a  
16 homeowners' association. Individual owners provide  
17 their own water and on-site septic systems.

18 CHAIRMAN SMITHERMAN: Septic? Okay.

19 COMM. ANDERSON: So it's both wells and  
20 septic systems?

21 MR. STRACKE: Yes, sir. Some rainwater  
22 catchment.

23 CHAIRMAN SMITHERMAN: Now, are there other  
24 transmission lines that are going through this  
25 development in any part of it?

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1 MR. STRACKE: No, sir. There are -- you  
2 know, CTEC has distribution lines.

3 CHAIRMAN SMITHERMAN: Okay. So your  
4 electricity is served by --

5 MR. STRACKE: CTEC.

6 CHAIRMAN SMITHERMAN: -- a co-op?

7 MR. STRACKE: Yes, sir, Central Texas  
8 Co-op based out of Fredericksburg, I believe.

9 CHAIRMAN SMITHERMAN: So your electricity  
10 is served by --

11 MR. STRACKE: CTEC.

12 CHAIRMAN SMITHERMAN: Co-op?

13 MR. STRACKE: Yes, sir, the Central Texas  
14 Co-op based out of Fredericksburg, I believe.

15 CHAIRMAN SMITHERMAN: Other questions of  
16 Mr. Stracke before we hear -- sir, please. Go ahead.

17 MR. STRACKE: And I wanted to introduce  
18 these homeowners. And I do have a very short, three  
19 minutes of comments, at the very end, if I could.

20 CHAIRMAN SMITHERMAN: Okay.

21 MR. STRACKE: Thank you.

22 MR. KERR: Okay. Let me introduce myself  
23 a little bit first. My background is building  
24 transmission structures. I started out the AB Chance  
25 Company when we were still building lattice towers. I

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1 designed all the structures on the Houston-Dallas double  
2 circuit 345 lattice tower line.

3 CHAIRMAN SMITHERMAN: Sir, pull that mic a  
4 little closer so they can hear you in the back. There  
5 you go.

6 MR. KERR: I designed and worked on all  
7 the structures on the 345 double circuit double delta  
8 transmission line from Fort Bend all the way up to  
9 Dallas. They married in -- they married Texas Power &  
10 Light and HL&P in Jewett, or that's where the transfer  
11 was. I worked for that same organization for 19 years.  
12 We developed tubular poles and tubular structures at  
13 that plant, and I was instrumental in the marketing of  
14 that, until I moved on to greener pastures.

15 Most of the people that are general  
16 managers or plant operators in the state of Texas were  
17 people that worked with me and trained with me when we  
18 were developing those poles, so I have a unique  
19 background in transmission construction. And I doubt  
20 seriously anybody in here knows as much about  
21 transmission structures. I've probably forgotten more  
22 than most people in this room have.

23 (Laughter)

24 MR. KERR: I respect your job with what  
25 you have to do, because you're affecting the lives of

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1 people, and all we were doing was supplying a product.  
2 People's lives are dependent upon the value of the  
3 property that they own. And it will diminish our  
4 property values if the line does, in fact, go through  
5 there, but it will do the same wherever it goes.

6 I hate to say this: I designed and built  
7 a lot of structures. I have yet to see a pretty one.  
8 They're all ugly.

9 I do have some questions that I have not  
10 had answered, and I'm concerned about it. One is the  
11 height of the structures with a monopole, and that's  
12 been proposed pretty much for this line. The higher you  
13 go, the greater the groundline moment, can't be avoided.  
14 We have very high winds right across that pipeline  
15 right-of-way. I've clocked ground speed winds at over  
16 50 miles an hour.

17 As you go up, as every engineer knows, the  
18 stronger that wind gets. The higher the structure, the  
19 greater the groundline moment. The load is exponential.  
20 That is easily accomplished in a lattice tower, because  
21 your base is spreading out as you go up. In a monopole,  
22 it's a whole different situation, because it's point  
23 loading.

24 I don't want to see a lattice tower in  
25 there; I would prefer not to see a monopole in there.

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1 But because they're saying this structure is over  
2 200-foot tall, I don't see how that they're going to  
3 handle that on monopole. Are they planning to upgrade  
4 this line to 800 kV or 790?

5 CHAIRMAN SMITHERMAN: No.

6 MR. KERR: Can they do that without  
7 running back --

8 CHAIRMAN SMITHERMAN: Let me just ask,  
9 what's the height, Ferdie?

10 MR. RODRIGUEZ: Mr. Chairman, the highest  
11 is 185 feet, and they can be substantially lower than  
12 that -- 120, 130 feet. 140 feet, I think, is what we're  
13 looking at if we were to monopole through this area.  
14 The height of the structures is not 200 feet.

15 CHAIRMAN SMITHERMAN: Okay. So it's going  
16 to be less than that.

17 MR. KERR: Still high but less than that?

18 CHAIRMAN SMITHERMAN: Yes.

19 MR. KERR: On the southwest corner of the  
20 ranch right near the entrance, there is a radio  
21 station -- radio tower. It's 140-foot tall, can be  
22 easily seen from I-10. I would imagine these towers  
23 will be two miles north of there. You'll still be able  
24 to see them from I-10, as we're right on the ridge,  
25 transition ridge from the Pedernales to the Guadalupe,

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1 and that's where that right-of-way is.

2 I would like to see it go elsewhere, but I  
3 can live with whatever the Lord supplies. So thank you.

4 COMM. ANDERSON: Let me ask just a quick  
5 question.

6 MR. KERR: Yes, sir.

7 COMM. ANDERSON: As between -- assuming  
8 that the tower is somewhere between 120 and I guess  
9 180 -- and the Judge has actually already recommended  
10 that it be monopole. I just want to make sure I  
11 understand. If it were to come through, you prefer  
12 monopoles?

13 MR. KERR: Yes.

14 CHAIRMAN SMITHERMAN: Okay. What's this  
15 total distance across the subdivision here?

16 MR. KERR: About three quarters of a mile.

17 CHAIRMAN SMITHERMAN: And, Ferdie, by  
18 you-all's calculations, what's the incremental cost per  
19 mile for monopoles?

20 MR. RODRIGUEZ: We can get that for you,  
21 Mr. Chairman. It's in Mr. Symank's testimony.

22 COMM. ANDERSON: The number that I recall  
23 was -- and it depends on the structure and depends on a  
24 lot of different factors. But when I was doing some  
25 rough back-of-the-envelope calculations, it was about --



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1 it shouldn't generally exceed 300,000 --

2 CHAIRMAN SMITHERMAN: Per mile?

3 COMM. ANDERSON: -- per mile, I think is  
4 what it was.

5 CHAIRMAN SMITHERMAN: Two to 300,000 is  
6 what I think.

7 COMM. ANDERSON: That's what I recall. It  
8 was between two and 300.

9 MR. RODRIGUEZ: Mr. Symank says that  
10 sounds correct.

11 CHAIRMAN SMITHERMAN: Okay.

12 COMM. ANDERSON: And so in my  
13 calculations, I was averaging up, to be safe, at about  
14 300,000 a mile.

15 COMM. NELSON: And that takes into  
16 consideration the reduced right-of-way?

17 MR. RODRIGUEZ: Yes. We would -- let me  
18 say this: If it were to go through Tierra Linda, I  
19 think this would be one of those areas where -- I'm not  
20 saying that expense is not a concern, but we would use  
21 the 100-foot right-of-way, smaller towers, shorter  
22 towers, as many towers as necessary to keep it within  
23 the right-of-way, keep it short, keep it as unobtrusive  
24 as possible. If we needed to use the rusted towers,  
25 that would be one of those areas where we would ask that

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1 you give us as much discretion as possible to minimize  
2 the footprint and the aesthetic --

3 MR. KERR: I would say one more thing  
4 before I get up. You might get a kick out of this. The  
5 towers that we delivered to Texas Power & Light in  
6 1959 -- delivered, galvanized -- 14.6 cents a pound.

7 (Laughter)

8 CHAIRMAN SMITHERMAN: Thank you; thank  
9 you.

10 UNIDENTIFIED SPEAKER: Times have changed  
11 all right.

12 (Laughter)

13 CHAIRMAN SMITHERMAN: Who is next?

14 MR. STRACKE: Becky Freeman lives along  
15 the right-of-way. Her home is within several hundred  
16 feet of the center of the proposed line on Segment B56.  
17 And she would be looking right out of the back of her  
18 home, the north side of her home that she's been  
19 enjoying for years is the place where they come down and  
20 unwind at the end of the day.

21 MS. FREEMAN: Becky Freeman.

22 CHAIRMAN SMITHERMAN: Welcome.

23 MS. FREEMAN: Hello. Thank you for  
24 letting me speak. My husband and I live on Tierra Linda  
25 Ranch located in the corner of Gillespie County, but our

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1 mailing address is Kerrville, so we're kind of step-  
2 children of both of those municipalities.

3           The route for the proposed transmission  
4 line, MK15 crosses our property. Eight years ago when I  
5 retired as a public school teacher, we paid cash for our  
6 home on six acres in Tierra Linda, anticipating living  
7 in the quiet scenic natural beauty that we found there,  
8 and we have not been disappointed.

9           Since moving to Tierra Linda, we've made  
10 two substantial investments improving our home, so it's  
11 worth a lot more now than it was when we bought it eight  
12 years ago. We have expected that some day we'll be able  
13 to reap the benefits if we need to fund long-term care,  
14 by selling our home in our later years. If the MK15  
15 line is approved, we have great concerns about the value  
16 of the property in the future and the gash that would be  
17 left in the natural environment we now enjoy.

18           Let me tell you about Tierra Linda Ranch.  
19 We are a 3000-acre working ranch -- horses, cows, the  
20 works. We are a wildlife preserve, all kinds of  
21 wildlife out there, and they're protected. Nobody gets  
22 to shoot them. There are approximately 200 --

23           COMM. ANDERSON: You just lost the  
24 Chairman.

25                           (Laughter)

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1 MS. FREEMAN: We lose a lot of friends who  
2 come and look at those black buck antelope and just  
3 can't stand it.

4 (Simultaneous discussion)

5 CHAIRMAN SMITHERMAN: I like to look at  
6 them, too.

7 MS. FREEMAN: We have approximately 270  
8 homes and over 500 people who live out there. We have  
9 an airport, and that has been mentioned some today, the  
10 one at Junction. We have a volunteer fire department  
11 that we are very proud of, and they serve more than just  
12 us. We have two tennis courts, a stable with 14 horses  
13 that our residents enjoy riding.

14 We have a pool and we have a stone  
15 clubhouse where a lot of different groups meet. We have  
16 a riding advisory group that promotes the horseback  
17 riding. And we have cookouts -- barbecues, cowboy  
18 breakfast. And it's just a great place to live. Tierra  
19 Linda is a real community in the true sense of the word.  
20 We have neighbors who care and are there for one another  
21 in times of joy and troubles.

22 Most of us are retirement age. My husband  
23 and I are both 70, and we've worked hard for a long time  
24 to be where we are, and we're enjoying the Hill Country  
25 and want to preserve it. We are one of what I think is

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1 13 homeowners living along the proposed MK transmission  
2 line who would be the most affected by a line crossing  
3 our properties. From our back door, it's close enough  
4 that I could literally throw a rock -- and I do throw  
5 like a girl -- to that right-of-way.

6 (Laughter)

7 A close neighbor would have the  
8 right-of-way crossing over their garage and studio.  
9 Another would have it passing over their pool, and I  
10 wouldn't be interested in swimming in that pool with  
11 that line over it. We're not a wealthy group of  
12 residents, but we have been hardworking people who have  
13 saved and are enjoying the fruits of our labor. And we  
14 want to continue to be able to live in the beautiful and  
15 unspoiled area we call the Tierra Linda Ranch.

16 One more thing. A few weeks ago, a dozen  
17 or 15 of us gathered one afternoon, and we tied that  
18 yellow caution ribbon around all the oak trees that we  
19 think will have to be cut down that we've measured and  
20 sort of know where this is, and there are hundreds of  
21 them. We think about 400 of those old oak trees will  
22 have to be taken out if this line goes through. It was  
23 shocking when we stood back and looked at all that  
24 yellow ribbon around those trees.

25 According to figures I've seen, building

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1 the line through Tierra Linda would affect many more  
2 residential homes and cost over 34 million more than  
3 other choices such as the MK13 which was the preferred  
4 route by the LCRA. That's money that the State of Texas  
5 does not have with the shortfall of income experienced  
6 this last year. There must be a better alternative to  
7 destroying the natural area that we have in Tierra Linda  
8 Ranch.

9 Thank you very much.

10 CHAIRMAN SMITHERMAN: Well, let me make  
11 two observations. First of all, your former students  
12 would be very proud of you.

13 MS. FREEMAN: Thank you. They're probably  
14 about your age.

15 (Laughter)

16 CHAIRMAN SMITHERMAN: You know, it's funny  
17 you should mention age --

18 (Laughter)

19 -- because I hope this doesn't upset your  
20 husband, but you look awfully good for 70.

21 (Laughter)

22 MR. FREEMAN: Hey, I know she does.

23 CHAIRMAN SMITHERMAN: Is that you? Are  
24 you --

25 MR. FREEMAN: Forty-six years' worth,

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1 baby.

2 (Laughter)

3 CHAIRMAN SMITHERMAN: And for the record,

4 I'm 53.

5 (Laughter)

6 MR. FREEMAN: Our daughter is 45.

7 (Laughter)

8 CHAIRMAN SMITHERMAN: Well, thank you very  
9 much. Thank you.

10 MR. STRACKE: Sharon Fell has property  
11 that her and her husband haven't built on yet. They  
12 bought it a couple of years ago, I want to say in  
13 this -- is Sharon here? Is she still here? Did she go  
14 to lunch?

15 MS. FELL: I'm here.

16 MR. STRACKE: You've decided not to speak?  
17 I'm sorry.

18 Well, let me just tell you a little bit  
19 about Sharon, just so you understand. Her and her  
20 husband bought their property about two years ago. And  
21 he has a medical condition which I can't pronounce, but  
22 they have been advised that if the lines come through,  
23 because of the equipment that they have that they  
24 cannot -- they should not build. It would not be  
25 advisable. And so they have been delaying their

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1 construction to see what happens in this docket. And,  
2 as you saw, she's decided not to speak today.

3 Carlos Reyes lives -- he's my neighbor.  
4 He lives right next to me. Carlos, his home is about  
5 800 feet from the center of the proposed B56 centerline.  
6 Anyway, I'll let Carlos --

7 MR. REYES: Thank you, Bruce.

8 I want to thank the Commission for giving  
9 us all the opportunity to come and address this issue,  
10 so I'll begin. My wife and I, we live in B56007. We  
11 invested quite a bit of time and effort locating, you  
12 know, what we consider to be the most beautiful place in  
13 Texas. And not only time that we invested but quite a  
14 substantial portion of our savings and we -- you know,  
15 the emergency response team knows our location as 145  
16 Indian Springs, but my wife and I, you know, like to  
17 look at it as the place where we would like to retire  
18 and join these folks who are living out the fruit of  
19 their labors and the fruition of their dreams.

20 Additionally, a pervasive theme during all  
21 these proceedings has been community value. And my wife  
22 and I have become so appreciative of the value of  
23 community. I know it hasn't escaped the attention of  
24 the Commission, the on-going participation of our  
25 community throughout these proceedings. And, you know,



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1 I'm joined here by over 100 of my friends, neighbors and  
2 their families. And the balance of the ranch that  
3 stayed behind are responsible for responding to  
4 emergencies or are infirm.

5 So the participation here is quite  
6 significant because of our concern and our caring. We  
7 have practiced, you know, exemplary stewardship of the  
8 land, and that's obvious to anyone who comes and visits  
9 that, because of the nature and the myriad of natural  
10 features such as the old oaks that was referred to  
11 earlier.

12 And I guess in conclusion, I just wanted  
13 to encourage the Commission to avoid the power lines  
14 coming through, which would be right outside my front  
15 porch. So again, I appreciate this opportunity.

16 CHAIRMAN SMITHERMAN: Thank you.

17 MR. STRACKE: And the Weinkaufs are  
18 actually -- their home is within 69 feet.

19 MR. WEINKAUF: All right. My name is John  
20 Weinkauf. This is my wife, Rebecca. We live at 2408  
21 Oak Alley. We are what we call ground zero. It goes  
22 over the top of our house and my workshop where I make  
23 my living, and it will diminish our life style greatly.

24 My wife has something she can read, if you  
25 can.

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1 MS. WEINKAUF: Because I knew I wouldn't  
2 be able to speak, as John said, my husband and I live  
3 directly in the pathway of the suggested route which  
4 means we will lose all that we have lived for and  
5 invested in. Not only this ranch as a whole will lose  
6 the unique and innovative qualities that make it a  
7 fixture in our community of Tierra Linda. We are  
8 69 feet from the center. The lines threaten to uproot  
9 us and to slice up the ranch. Tierra Linda is a land of  
10 private property owners, young and old, all income  
11 levels, who share the costs of maintaining the ranch as  
12 a whole. As a community, we work hard to maintain the  
13 natural beauty of the ranch where we can have space for  
14 horseback riding, biking, walking, hiking and  
15 picnicking, all the things that we do together.

16 We invest in our homes while maintaining  
17 the function and quality of our working ranch. Some  
18 owners are retired, some work in Kerrville, some work in  
19 Fredericksburg and nearby towns. We all love our homes.  
20 We invest in the local economies and communities and  
21 help create local jobs and revenue. I'm a local school  
22 teacher, still am. I had to get permission to take the  
23 day off to come. And my husband, as he said, is a  
24 custom bootmaker. He has already been impacted --

25 CHAIRMAN SMITHERMAN: Well, wait a minute;

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1 wait a minute. Just stop right there.

2 (Laughter)

3 CHAIRMAN SMITHERMAN: Stop right here.

4 UNIDENTIFIED SPEAKER: He's got a deal for  
5 you.

6 (Laughter)

7 MR. WEINKAUF: I want you to know I quit  
8 taking orders six months ago, because I didn't know what  
9 was going to happen.

10 (Laughter)

11 MS. WEINKAUF: Yes. We've spent the last  
12 six years remodeling our house into the home we wanted  
13 in Tierra Linda, as well as gaining a whole community of  
14 friends through help provided and help received. This  
15 upheaval of taking our home, its warmth and comforts and  
16 invested years is something that is extremely trying.

17 If you vote to slice the transmission  
18 lines through our land -- and for us it will be through  
19 our home -- we will lose all that we have worked to  
20 establish. The past year we have had to replace well  
21 pump and pipes, water lines, plus electrical work, just  
22 to enable us to stay living there until the PUC made  
23 their decision. We have had to pay taxes on a property  
24 that may be taken away by imminent domain. And our life  
25 has been nothing like the peace it was.

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1 Starting out the new year with these  
2 uncertainties is anything but peaceful. And while we  
3 are very much looking forward to some final decision  
4 being made, we are concerned about your choice. And I  
5 understand it's a tough decision. And I thank you for  
6 letting us share our stories.

7 CHAIRMAN SMITHERMAN: Well, thank you very  
8 much for coming.

9 Ferdie, let me ask you a question. As I'm  
10 looking at the maps and as we talked about earlier in  
11 the context of another case, you know, it's hard to look  
12 at individual pieces. You sort of have to look at the  
13 theme of what a line looks like. So sort of walk me  
14 through LCRA's thought process.

15 As you come from I-10 headed in this  
16 directions, coming through this development, I assume  
17 you were trying to make your way over to the gen tie so  
18 that you could use that right-of-way to work your way  
19 down to the substation. And because they have a  
20 pipeline running through here, that provided a potential  
21 avenue?

22 MR. RODRIGUEZ: That's correct,  
23 Mr. Chairman. As we were coming down I-10 -- in fact,  
24 if you look at the area there, there's a reason why  
25 infrastructure is where it is. The topography of the

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1 area lends itself to things like pipelines, I-10. And  
2 as we come down -- for example, as we came down I-10,  
3 under the rules we're supposed to look at paralleling  
4 compatible rights-of-way such as a pipeline.

5 The pipeline is a routing opportunity  
6 under the rules. That's essentially what we were trying  
7 to do. The pipeline has been there for a long time.  
8 The development actually was built around the pipeline,  
9 and it is -- excuse me. It's approximately 4,000 feet  
10 from east to west as we cross it, and we were trying to  
11 do just exactly what you said. It's a routing  
12 opportunity under the rules, and I think we would have  
13 been expected to look at it. And if it looked like it  
14 was something that we should parallel, we would have  
15 been expected to do that, and that's why we put it  
16 there. You're right. We trying to traverse from I-10  
17 to get over to the Horse Hollow line.

18 CHAIRMAN SMITHERMAN: That's what I  
19 thought, and I think you were doing the right thing in  
20 putting it on the table. If the Horse Hollow project  
21 were not available -- let's pretend it's not there --  
22 what would your thought process have been then?

23 MR. RODRIGUEZ: Well, it's hard to say.

24 CHAIRMAN SMITHERMAN: Well, let me sort of  
25 help you out, because your first set of potential routes

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1 did not follow -- if I'm recalling correctly, did not  
2 follow Horse Hollow, as I recall. Coming into the  
3 Comfort substation, you had three distinguished routes  
4 that were sort of paralleling each other and working  
5 their way. And, of course, then it gets narrower and  
6 narrower as you get close to the substation.

7 MR. RODRIGUEZ: They do converge on the  
8 substation.

9 CHAIRMAN SMITHERMAN: Because I think  
10 Horse Hollow -- I think paralleling Horse Hollow or the  
11 private gen tie really came into being in a later  
12 iteration of your routes.

13 MR. RODRIGUEZ: Mr. Chairman, I'm not sure  
14 that's correct.

15 CHAIRMAN SMITHERMAN: Okay.

16 MR. RODRIGUEZ: I think Horse Hollow was  
17 energized in the fall of '09, I believe, but we were  
18 aware of it, and it presented itself as another routing  
19 opportunity. And I know -- I guess we'll get into this  
20 later -- about whether or not a private line constitutes  
21 a compatible right-of-way. But without that kind of  
22 direction to us, it was something that we would have  
23 been expected to parallel.

24 CHAIRMAN SMITHERMAN: Listen, I'm not  
25 being critical.

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1 MR. RODRIGUEZ: Right.

2 CHAIRMAN SMITHERMAN: Don't take it -- and  
3 we haven't discussed what we collectively think about  
4 Horse Hollow as compatible right-of-way. But you've  
5 confirmed what I thought was your thought processes.  
6 Let's try to, given another route that gets into the  
7 station, other than I-10, parallel some of the stuff  
8 that the Commission rules talk about, and so this became  
9 your opportunity.

10 MR. RODRIGUEZ: That's correct. The only  
11 place where I think I would differ with you is, I think  
12 we were always looking at the pipeline and the Horse  
13 Hollow line as routing opportunities.

14 CHAIRMAN SMITHERMAN: Okay.

15 MR. RODRIGUEZ: But, yes, we were trying  
16 to follow the routing criteria in 25.101.

17 CHAIRMAN SMITHERMAN: Tell me -- Bruce,  
18 may I?

19 MR. STRACKE: Yes, sir.

20 CHAIRMAN SMITHERMAN: How big is the whole  
21 development of Tierra Linda?

22 MR. STRACKE: It's about 3,000 acres, 370  
23 individual tracts and 276 single-family residences.

24 CHAIRMAN SMITHERMAN: And do you know the  
25 assessed valuation for the whole thing?

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1 MR. STRACKE: About \$126 million. And  
2 Bill Perkison nearby can confirm that.

3 MR. PERKISON: Yes.

4 MR. STRACKE: Is that right?

5 MR. PERKISON: That is correct. It was on  
6 the Gillespie County Appraisal Board.

7 CHAIRMAN SMITHERMAN: Generally what's the  
8 soil like there? Is this caliche?

9 (Laughter)

10 UNIDENTIFIED SPEAKER: There is no soil.

11 UNIDENTIFIED SPEAKER: No top soil.

12 (Laughter)

13 CHAIRMAN SMITHERMAN: Tell me the nature  
14 of the rocks.

15 (Laughter)

16 UNIDENTIFIED SPEAKER: Wherever you've  
17 seen rocks.

18 MR. STRACKE: I'm a home builder, and I'm  
19 currently building a project on the ranch. And when I  
20 brought out the concrete guy, he says "No problem.  
21 We'll bring our hand shovels and move the little bit of  
22 dirt around," and we can have a foundation if you want."  
23 It's typically very rocky. There's a thin, what's  
24 common in the karst formation of the Edwards Plateau.  
25 You have that very thin dark soil on top that does



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1 provide a lot of good grass and such, but it's a very  
2 thin layer on top of the limestone that's common in the  
3 karst formation.

4 CHAIRMAN SMITHERMAN: Man, I hate to even  
5 ask this --

6 MR. STRACKE: Uh-oh.

7 CHAIRMAN SMITHERMAN: -- but I'm going to  
8 ask it. Ferdie, what's the cost of undergrounding per  
9 mile through this territory? And is it even feasible?  
10 And you may want to think about this, because you've got  
11 a pipeline there, which complicates things.

12 MR. RODRIGUEZ: It does. If you will give  
13 me a second, I think we can come up with a figure.

14 CHAIRMAN SMITHERMAN: All right.

15 COMM. ANDERSON: Let's me ask a question.  
16 I'm sorry. The last name is --

17 MR. STRACKE: "Stray key," like a lost  
18 key.

19 COMM. ANDERSON: Okay. Stracke.  
20 Mr. Stracke, I had my staff kind of run a few numbers.  
21 I want to see if you agree with this or can confirm.  
22 And it may actually be in -- this may come from the  
23 record. But of the 19 homes in the Tierra Linda area  
24 that would be directly -- I guess that were noticed or  
25 that were directly affected, there are 12 within

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1 300 feet of the centerline. Does that conform to what  
2 you know?

3 MR. STRACKE: That's consistent with my  
4 knowledge.

5 COMM. ANDERSON: Within 300 feet. And  
6 then there are 15 within -- I guess within 400 feet but  
7 12 within 300 feet?

8 MR. STRACKE: That's consistent with my  
9 understanding.

10 CHAIRMAN SMITHERMAN: What does the  
11 property on either side of the development look like  
12 along this pipeline corridor? Again, I'll refer back to  
13 Google Maps. It looks like it's undeveloped. Can you  
14 give me the nature of --

15 MR. STRACKE: They're larger tract  
16 ranches. They are farther to the east -- yes, farther  
17 to the east. On B56, there are additional smaller  
18 tracts similar to ours that are old family ranches that  
19 have been, you know, broken up and given to the kids.  
20 But the ranches directly adjacent to us on either side  
21 are currently still larger tracts.

22 CHAIRMAN SMITHERMAN: Because your  
23 development is sort of an oddly shaped development, and  
24 I can only assume that's because of the size of the  
25 properties on either side.

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1 MR. STRACKE: It's very unique in the Hill  
2 Country, yes, sir.

3 (Simultaneous discussion)

4 MR. RODRIGUEZ: I don't know if this will  
5 help. This is one of the maps in the filing.

6 CHAIRMAN SMITHERMAN: Okay. Let's --

7 MR. RODRIGUEZ: It's kind of a --

8 CHAIRMAN SMITHERMAN: Give me a reference.

9 MR. RODRIGUEZ: Sheet 26 of 28, the -- at  
10 26.2. We just had them made.

11 CHAIRMAN SMITHERMAN: Okay.

12 MR. RODRIGUEZ: And I don't know if this  
13 would be helpful or not.

14 UNIDENTIFIED SPEAKER: Yes.

15 MR. RODRIGUEZ: Thank you for your  
16 services. But I think to answer your question, if this  
17 was your question, there were I think eight directly  
18 affected properties.

19 CHAIRMAN SMITHERMAN: Oh, this helps.

20 COMM. ANDERSON: How do you define  
21 "directly affected"? Is that within the right-of-way?

22 MR. RODRIGUEZ: They would be within the  
23 right-of-way.

24 COMM. ANDERSON: Within the right-of-way.  
25 But there were I think 19 that were within 500 feet of

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1 the centerline that were noticed.

2 MR. RODRIGUEZ: Well, the blue line is the  
3 noticed -- the blue lines are the noticed corridors.

4 COMM. ANDERSON: Okay.

5 CHAIRMAN SMITHERMAN: While they're  
6 crunching numbers, if you guys want to keep on.

7 MR. WEINKAUF: Can I say one other thing?

8 CHAIRMAN SMITHERMAN: Sure.

9 MR. WEINKAUF: At our place we've got some  
10 pine trees, and I don't know who put them there, but  
11 they don't belong there, but they're about 80 feet tall.  
12 And I can go to the back of the ranch and see them, and  
13 I can go to the front of the ranch and see them. And if  
14 you put towers up there, you'll see them from  
15 everywhere.

16 MS. WEINKAUF: 100 feet higher.

17 COMM. ANDERSON: Which tract are y'all  
18 on -- or is it 249?

19 MR. STRACKE: B56008.

20 COMM. ANDERSON: I'm sorry?

21 MR. STRACKE: B56008.

22 COMM. ANDERSON: Okay. I see it.

23 CHAIRMAN SMITHERMAN: 249.

24 COMM. ANDERSON: So it's 249.

25 MR. STRACKE: Oh, I'm sorry. 249.

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1 MR. RODRIGUEZ: Mr. Chairman?

2 CHAIRMAN SMITHERMAN: Yes, sir.

3 MR. RODRIGUEZ: The answer to the previous  
4 question, Mr. Symank estimated probably 70 million.

5 (Simultaneous discussion)

6 CHAIRMAN SMITHERMAN: Hold on a second.

7 MR. RODRIGUEZ: Approximately 70 million  
8 if you were thinking about going underground.

9 CHAIRMAN SMITHERMAN: Seven zero?

10 MR. RODRIGUEZ: Yes.

11 UNIDENTIFIED SPEAKER: Man, how can it be  
12 that expensive?

13 (Simultaneous discussion)

14 (Laughter)

15 CHAIRMAN SMITHERMAN: Okay. Hey, Ferdie,  
16 do this for me. Will you put some numbers in the record  
17 on this on -- do this.

18 MR. RODRIGUEZ: Sure.

19 COMM. ANDERSON: Will we have to reopen?

20 CHAIRMAN SMITHERMAN: Or just -- I don't  
21 want to reopen it. But somehow give me some -- for  
22 demonstrative purposes, give me some numbers.

23 MR. RODRIGUEZ: Right now would you like  
24 us to write something and file it tomorrow, whatever  
25 your pleasure?

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1 CHAIRMAN SMITHERMAN: Why don't you think  
2 about it a little bit more.

3 (Laughter)

4 CHAIRMAN SMITHERMAN: That number can't be  
5 right.

6 MR. STRACKE: It's my understanding that  
7 going through Tierra Linda costs more than the --

8 CHAIRMAN SMITHERMAN: Because it was  
9 50 million to bury the line around the airport.

10 COMM. ANDERSON: For a half mile.

11 UNIDENTIFIED SPEAKER: For 1500 feet.

12 MR. STRACKE: Well, they're spending more  
13 going through Tierra Linda than --

14 CHAIRMAN SMITHERMAN: Okay.

15 MR. STRACKE: -- it would be I-10.

16 CHAIRMAN SMITHERMAN: All right.

17 MR. JOURNEAY: If you didn't hear, sir, he  
18 was 249 on that map.

19 UNIDENTIFIED SPEAKER: Yes, sir.

20 CHAIRMAN SMITHERMAN: All right. Just  
21 check your math, will you? I'm not --

22 COMM. NELSON: So the cost above ground  
23 for that same segment of three-quarters of a mile is?

24 CHAIRMAN SMITHERMAN: One point --

25 MR. RODRIGUEZ: 1.8.

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1 CHAIRMAN SMITHERMAN: -- something.

2 COMM. NELSON: Because usually we hear a  
3 multiplier of 10.

4 CHAIRMAN SMITHERMAN: That's what's kind  
5 of throwing me off.

6 COMM. NELSON: Which was 18 million is  
7 what we have heard, like in Houston when they talked  
8 about it after Hurricane Ike.

9 MR. RODRIGUEZ: Well, as Mr. Symank  
10 mentioned, this is double circuit, and it's going  
11 through rock.

12 COMM. NELSON: Right.

13 CHAIRMAN SMITHERMAN: Okay. Well, let's  
14 check the math on that.

15 Who else do we have, Bruce?

16 MR. STRACKE: Thank you.

17 CHAIRMAN SMITHERMAN: Thank you very much  
18 for coming.

19 So let me see what you got on -- show  
20 me -- do you wear one of your products here?

21 MR. WEINKAUF: You bet.

22 CHAIRMAN SMITHERMAN: That looks good.  
23 Okay.

24 (Laughter)

25 MR. STRACKE: You're down to me.

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1 CHAIRMAN SMITHERMAN: Okay.

2 MR. STRACKE: And I appreciate your act of  
3 compassion.

4 CHAIRMAN SMITHERMAN: Sure.

5 MR. STRACKE: Thank you.

6 As I kind of alluded to in my opening  
7 remarks, the route across Tierra Linda Ranch is atop a  
8 rolling ridge that divides the Guadalupe and Pedernales  
9 watersheds. As this ridge is the high ground for the  
10 surrounding country, it possesses a striking Hill  
11 Country vista, not quite the same as a busy freeway  
12 corridor.

13 In the last 180 days, I can tell you I've  
14 struggled to learn this process as someone who has never  
15 done it and doesn't have the resources available to just  
16 hire the entire thing out. It's been a community effort  
17 to learn this process and the (inaudible) corridors that  
18 you have to go through to accomplish everything.

19 But in doing that, I think what I've  
20 learned is that counting habitable structures allows  
21 things like the showroom or a paint shop or a parts  
22 warehouse or a service building for heavy equipment to  
23 count and carry as much weight as someone's home that's  
24 been carefully placed among the mature oaks of a  
25 similarly sized tract of land. And I've learned that



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1 the process doesn't seem to account for the way we  
2 choose where to work, shop and live or the fabric of our  
3 own communities.

4                   Though more weight is given to a  
5 commercial property with multiple building than a home,  
6 our perception of the impacts are just the opposite and  
7 extend far beyond just property lines that are imaginary  
8 on the ground. Even PUC Staff members have commented  
9 that they had not purchased a particular home because of  
10 its proximity to power lines, though no one has  
11 suggested to me that they wouldn't shop or work near  
12 them.

13                   It's been interesting to me to note, as  
14 it's not a numbers game, as you all pointed out earlier,  
15 but that the intervenors from towns have been far out-  
16 numbered by those from the country. Even on those  
17 segments within the city limits where higher numbers of  
18 habitable structures exist, town folks didn't get all  
19 that involved.

20                   While I wouldn't suggest that the process  
21 be a popularity contest, if we consider human nature, we  
22 must recognize folks tend to get involved when an issue  
23 matters to them. I understand that there are over 1,000  
24 intervenors in this docket, though in the southeast  
25 portion of the study area near I-10, only one business

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1 person chose to intervene, and none of the residents  
2 along the freeway did.

3 Of the 276 homeowners on Tierra Linda  
4 Ranch, 233 property owners intervened. One out of every  
5 five of the over 500 residents of Tierra Linda Ranch are  
6 actually here today. You may have seen the hundreds of  
7 individual, and I might add very personal letters from  
8 Tierra Linda community that have been sent to you. I  
9 assure you this decision matters to us.

10 To wrap up, in your memo from yesterday,  
11 Chairman Smitherman, you had this to say, if you don't  
12 mine me quoting you, I hope.

13 CHAIRMAN SMITHERMAN: People often do --  
14 (Laughter)

15 MR. STRACKE: In this docket --

16 CHAIRMAN SMITHERMAN: -- particularly when  
17 they're trying to argue against something.

18 (Laughter)

19 MR. STRACKE: I'm trying to emphasize a  
20 point you made. In this docket -- you might quote from  
21 your memo -- "In this docket, almost universally open  
22 house commenters ranked using or paralleling existing  
23 right-of-way, maximizing distances from residences,  
24 minimizing environmental impacts and minimizing the  
25 visibility of the lines as the highest priorities. Few

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1 folks would envision a 50-foot wide break among hundreds  
2 of mature oaks atop a Hill Country ridgeline to be a  
3 compatible right-of-way. Nor do they realize the USDA  
4 laboratory counts as much as 10 residences."

5                   In fact, I can assure you that just  
6 yesterday I amazed someone when I told them that a  
7 habitable structure did not mean someone's home. I  
8 think most folks today understand environmental impacts.  
9 But what exactly does reducing the visibility of the  
10 lines mean? Frankly, to me, that sounds like a non  
11 sequitur.

12                   I have learned when you ask folks if they  
13 believe lines should follow a freeway or pass through  
14 our neighborhoods, they answer, "Along the freeway"  
15 every time. Route MK62 takes advantage of the gracious  
16 offer of those folks who welcome the lines while  
17 honoring the clear voice of Hill Country folk to site  
18 lines away from our homes and along freeways where they  
19 pose little disruption.

20                   Please do the right thing and honor the  
21 many voices of the Hill Country. And I cannot tell you  
22 how much I thank you-all and appreciate the fact that I  
23 do not have your very, very difficult job. And I have  
24 just been -- if you would allow me a little latitude,  
25 the lady who said that she was too emotional to speak

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1 earlier has asked to speak.

2 MS. HEISE: I thought someone was going to  
3 read my letter, because I don't know if I can get  
4 through it.

5 UNIDENTIFIED SPEAKER: Jeanne, you get up  
6 here and speak. Come on.

7 MS. HEISE: I don't have it in front of  
8 me.

9 UNIDENTIFIED SPEAKER: Well, you know it.

10 MS. HEISE: I can't. I painted this,  
11 because I can't talk about it. This is my back yard  
12 now. The reason we bought our house was because of this  
13 gorgeous view -- you can take it out. Paper cut.

14 MR. STRACKE: She is one of our many  
15 resident artists.

16 MS. HEISE: Yes. That's another reason we  
17 moved. We left Houston to get away from power lines and  
18 traffic and, you know, everything over there, and we  
19 bought in Kerrville, because it's a great artist  
20 community. And Tierra Linda itself has at least a dozen  
21 or so working artists. It's just the neatest place.

22 And outside of my studio window -- it's  
23 just a bedroom; it's not a detached building. We're the  
24 second closest house to the line, on the power line, I  
25 believe. We're just next to Becky and the Weinkaufs,

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1 we're right across Oak Alley from them.

2           Anyway, this is what I see when I look out  
3 my window when I'm painting now. This is what it's  
4 going to look like if you put that thing in my back  
5 yard. It's going to be a toxic waste dump with nothing  
6 but rubble and huge awful towers.

7           And that's all I have to say about it.  
8 But not only that, but we invested our entire life  
9 savings in this place, and we have nothing else to live  
10 on when that's gone.

11           I can't read the letter, but that's really  
12 all I have to say.

13           CHAIRMAN SMITHERMAN: Thank you.

14           You know, let me just point out one thing.

15           UNIDENTIFIED SPEAKER: Yes, sir.

16           CHAIRMAN SMITHERMAN: You mentioned  
17 habitable structures and prudent avoidance. And I think  
18 it's insightful to really read the language of our rule,  
19 25.101(A)(4), because when it talks about prudent  
20 avoidance, it says, "The limiting of exposures to  
21 electric and magnetic fields than can be avoided with  
22 reasonable investments of money and effort."

23           I don't think we've ever really discussed,  
24 when we talk about prudent avoidance, if this is more  
25 pertinent to single-family homes, apartments, commercial

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1 buildings, hospitals. You know, should we give greater  
2 weight to a structure where people were there 24/7 as  
3 opposed to them being there from 9:00 to 5:00 or 9:00 to  
4 9:00 or whatever the workday happens to be? So it's an  
5 interesting idea.

6 I mean, I think we're going to talk about  
7 this in the concept of particularly what do we do on the  
8 southeast portion of the corridor, as I tried to  
9 highlight in my memo. To me that's the most difficult  
10 part of this whole analysis.

11 MR. STRACKE: And I have read the rule,  
12 and I'm familiar with it. I appreciate you mentioning  
13 it. The point I'm trying to make is that beyond the  
14 rule, just by human nature, we view the impacts  
15 instinctively in our guts differently when we go visit  
16 industrial or commercial or more urban settings when  
17 we're nearer to freeways in towns and such. We expect  
18 to see the signs of progress in these kinds of things.

19 But when we leave those things behind when  
20 we go out into the Hill Country or other native areas in  
21 the country, we expect to see them less. And so it's  
22 more shocking to our sensibilities when we do that. And  
23 I was trying to go beyond that and follow your guidance  
24 on bringing up a different way to look at things.

25 CHAIRMAN SMITHERMAN: Yes. And this is

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1 not in the rules either, but to me at some point it's  
2 sort of a question of: What were your expectations when  
3 you purchased the property? You know, if you purchase  
4 it in a particular place expecting a particular future,  
5 driven by what you find when you get there, you know,  
6 does that have any role to play? It's not in our rules.

7 MR. STRACKE: No.

8 CHAIRMAN SMITHERMAN: It's not in the  
9 statute. We don't talk about it.

10 MR. STRACKE: You're right. But I have a  
11 young family. My oldest just got into college, and my  
12 youngest is seven. And so, I mean, my plan was to live  
13 there, you know, until the kids are all out of college  
14 at least, if not to retire there afterwards. You're  
15 right.

16 UNIDENTIFIED SPEAKER: Lightning strikes  
17 if you're --

18 CHAIRMAN SMITHERMAN: Better not. Let's  
19 not go there. I mean, I think your argument begins to  
20 lose weight if it's just an anti-transmission argument,  
21 because we love electricity, we love the comfort, we  
22 love the economic development that comes from it, and  
23 you really can't have it without transmission,  
24 regardless of whether the power plant at the end of that  
25 is a nuclear plant, a gas plant, a coal plant or a wind

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1 farm.

2 Anyone else, Bruce? Is that it?

3 MR. STRACKE: No, sir.

4 CHAIRMAN SMITHERMAN: All right. Thank  
5 you very much.

6 MR. STRACKE: Thank you so much for your  
7 compassion and --

8 CHAIRMAN SMITHERMAN: Does that --

9 MR. LLOYD: I think we may have one more.

10 CHAIRMAN SMITHERMAN: One more. I'm  
11 sorry.

12 MS. DENDY: My name is Fran Dendy. I did  
13 not intend to speak today. You don't have me listed  
14 anywhere. But I don't feel like my area has been  
15 represented. I came on the bus with these Tierra Linda  
16 people, and I'm wearing this tag, but we don't -- I'm  
17 not living on the Tierra Linda Ranch. We are on the B48  
18 right as it exits I-10. And our ranch is there, and  
19 there are --

20 COMM. ANDERSON: What was the name again?

21 MS. DENDY: Dendy, D-e-n-d-y. You have a  
22 bunch of letters from us, but I didn't ask to speak  
23 today.

24 CHAIRMAN SMITHERMAN: Well, thank you for  
25 letting us know you came.



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1 MS. DENDY: Our ranch has been in the  
2 family -- three more years, it will be 100 years. And  
3 we don't want those -- the big lattice work poles there,  
4 too. I know you're talking about the monopoles in  
5 Tierra Linda and all, and I think that's wonderful. But  
6 we're worried about our ranch as well. I talked with  
7 one of my six grandchildren just yesterday on the phone,  
8 telling her that we have that pipeline coming through  
9 and now we're -- now, it's not at the same location --  
10 but now there's a possibility of having the power line  
11 come through, and we wanted to give them something that  
12 they could be very proud of, and they're not going to be  
13 getting it if this happens. At least the pipeline is  
14 not above ground. You can't see it.

15 COMM. ANDERSON: How far is the ranch  
16 headquarters or your house from the pipeline?

17 MS. DENDY: Our house is a ways from where  
18 it's going to come through. But my sister's house and  
19 my nephew's house would be -- and my neighbor's house  
20 back there -- are right on that B48.

21 CHAIRMAN SMITHERMAN: Thank you.

22 MS. DENDY: Thank you.

23 COMM. ANDERSON: Thank you again.

24 CHAIRMAN SMITHERMAN: Yes, sir. Do we  
25 have one more?

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1 MR. STRACKE: No, we don't.

2 CHAIRMAN SMITHERMAN: All right.

3 MR. STRACKE: But thank you very much. We  
4 really appreciate your working with us and allowing us  
5 to come before you today. We appreciate the difficulty  
6 of your job.

7 CHAIRMAN SMITHERMAN: Okay. Shannon, did  
8 you want to say something?

9 MS. McCLENDON: Yes, sir.

10 CHAIRMAN SMITHERMAN: Somehow I had a  
11 feeling that you had --

12 (Laughter)

13 CHAIRMAN SMITHERMAN: I wanted to hear  
14 from your client, but I understand they're not here, AC  
15 Ranches.

16 MS. McCLENDON: That is correct.

17 CHAIRMAN SMITHERMAN: Okay. Probably  
18 because we said we should limit the number of people who  
19 came, but --

20 MS. McCLENDON: And sometimes you don't  
21 want the lawyers to talk, just the landowner, and I  
22 didn't want him hurting our case.

23 CHAIRMAN SMITHERMAN: Okay.

24 (Laughter)

25 MS. McCLENDON: He would be okay with

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1 that.

2 For the record, I'm Shannon McClendon.  
3 I'm with the Law Firm of Webking McClendon. I represent  
4 120 people in this case. 117 of them are with the  
5 Alliance For A3. They are -- I discouraged them from  
6 packing the room. I know that that's not going to make  
7 a difference with y'all. Y'all have said it's not a  
8 numbers game, so we didn't do that. We did, however,  
9 have six come in case you had questions. They're in the  
10 overflow room right now.

11 One, Mark Carama (phonetic) is with the  
12 Falling Water Subdivision, and David Hartman (phonetic)  
13 is with the Reserve Subdivision. And then we just have  
14 other speckled ones throughout.

15 COMM. ANDERSON: Shannon --

16 MS. MCCLENDON: Yes, sir.

17 COMM. ANDERSON: -- if I recall correctly,  
18 they're on the P lines?

19 MS. MCCLENDON: No, sir. We are in  
20 between -- I'm sorry. We're in between the Gillespie  
21 substation and the Kendall substation. And so once you  
22 took that line off, A3 came off, which was the line that  
23 we were supporting. The Alliance for --

24 CHAIRMAN SMITHERMAN: Maybe you didn't  
25 hear me.

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1 MS. McCLENDON: Yes, sir.

2 CHAIRMAN SMITHERMAN: I said what I was  
3 interested in hearing was about AC Ranches.

4 MS. McCLENDON: Yes, sir.

5 CHAIRMAN SMITHERMAN: Is that your client?

6 MS. McCLENDON: Yes, sir, it is.

7 CHAIRMAN SMITHERMAN: Okay.

8 MS. McCLENDON: And if I can state for the  
9 record, so is the McGinley L-Bar Ranch and the Armstrong  
10 Exempt Trust. But let's talk about AC Ranches, sir.

11 CHAIRMAN SMITHERMAN: Because I found it  
12 unique that your client wanted to make their property  
13 available for the line. And since they constitute such  
14 a big portion of that one segment, you know, I think  
15 it's worthy of noting, because I'm not sure the last  
16 time we've had anybody volunteer that big of a piece of  
17 property for the line to go through in a diagonal way.

18 MS. McCLENDON: That's correct; that's  
19 correct, Mr. Chairman. The AC Ranches, the primary  
20 owner is Charlie Nicholas, and he is in contract with a  
21 wind company to have a wind farm. It's not sure whether  
22 or not that's going to happen, as we continue to have  
23 more and more of these farms come up. He also has such  
24 a large amount of land as well, that if it was going to  
25 come on his property or nearby, we would prefer to

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1 figure out where it should go instead of it going  
2 somewhere else.

3                   So he went to the expense, or the company  
4 went to the expense of hiring a land surveyor as well as  
5 a right-of-way services company to place the -- to  
6 maximize the amount of line so it wouldn't harm as many  
7 of the neighbors as much. AC Ranches also has another  
8 ranch, which is in the record -- hopefully everything  
9 I'm saying is in the record -- that is south of the AC1,  
10 the more north. We originally designed the line to go  
11 through all three of those, but it would cause a lot  
12 more distance and required right-of-way. So we went to  
13 LCRA and proposed this, and we worked with them and  
14 provided them data. They provided us data, and we're  
15 able to get it on the map.

16                   CHAIRMAN SMITHERMAN: Do you guys have any  
17 questions of Shannon?

18                   COMM. ANDERSON: I don't.

19                   CHAIRMAN SMITHERMAN: Thank you.

20                   MS. McCLENDON: Yes, sir.

21                   CHAIRMAN SMITHERMAN: So let's do this, if  
22 you-all are amenable.

23                   COMM. ANDERSON: There may be some  
24 other --

25                   CHAIRMAN SMITHERMAN: Do we have someone

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1 else?

2 MS. CRUMP: Yes, Your Honor. I represent  
3 Mr. Atkission from the City of Kerrville. He's a  
4 directly affected property owner. He is a party.

5 CHAIRMAN SMITHERMAN: Okay. All right. I  
6 thought we did Kerrville earlier today, but --

7 UNIDENTIFIED SPEAKER: I think you did the  
8 public officials, sir.

9 CHAIRMAN SMITHERMAN: Please, sir.

10 MR. ATKISSION: Good afternoon. My name  
11 is Cecil Atkission. I live in Kerrville. I have a lot  
12 in common with a lot of the people that are here today,  
13 and that's the love for the Hill Country and Kerrville  
14 and surrounding areas. The things that you haven't  
15 heard from today is, I'm a businessman in Kerrville.  
16 You held up the picture earlier about the -- showed a  
17 picture of the dealership.

18 CHAIRMAN SMITHERMAN: Right.

19 MR. ATKISSION: And I'm the car guy.

20 In my business we employ 57 people. If  
21 the proposed route that's referred to as 19B, which  
22 encompasses my property, we have a substantial  
23 investment in Kerrville in our real estate. And, like  
24 everybody else here, we're really concerned with what  
25 the power line will do to the value of our property.

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1           Besides that, we are also concerned about  
2 what it would do for our business if the preferred  
3 route -- the route you have around my piece of  
4 property -- I'm not an engineer, but I would probably  
5 have someone in the neighborhood of between three and as  
6 many as 10 poles on my property, most of those poles  
7 being less than 100 feet of my business.

8           I've showed you a -- I'll give you a  
9 piece of property -- a picture that has my property and  
10 the hard surfaces and the buildings of the dealership.  
11 I'm just here to ask you to consider the preferred route  
12 from LCRA.

13           CHAIRMAN SMITHERMAN: Ken?

14           COMM. ANDERSON: And I'm looking at --  
15 well, I asked the County Judge of Kerr County and the  
16 Mayor earlier -- I don't know if you were here for that.

17           MR. ATKISSON: I wasn't.

18           COMM. ANDERSON: -- about an idea that  
19 LCRA raised in their reply to the exceptions. And I'm  
20 looking at Attachment A to, I believe, the Kerr -- the  
21 Kerrville -- I think they were the exceptions -- let me  
22 just verify that -- yes, the exceptions. I guess it's  
23 your exceptions, too.

24           MR. ATKISSON: Yes, sir.

25           COMM. ANDERSON: It's about -- for some

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1 period or some distance crossing south -- because of the  
2 bulk of the habitable structures appear to be on the  
3 north side right in this segment, by crossing -- and I'm  
4 not -- I haven't decided what I'm going to do. But if  
5 we went down this route -- because while I have you  
6 here, I want to make a list of possible adjustments  
7 before we -- crossing south of I-10 across the Lowe's  
8 parking lot, there's I guess a Holiday Inn, some other  
9 commercial property before -- and I don't know exactly  
10 what LCRA, how far they would take it south, but  
11 cross -- and then at some point, I don't know if it's  
12 the other side of 16 or where, but it would cross back  
13 over north.

14                   It would appear, at least from the  
15 exhibit -- this is Attachment A to your exceptions --  
16 that that would -- that would significantly reduce the  
17 number of habitable structures. Now, a lot depends how  
18 far they go. You know, again, I'm not trying to draw  
19 the line. But if we went that way -- and I understand  
20 that you prefer the preferred route, LCRA's preferred  
21 route; in the absence of that, the ALJs' route.

22                   Is that something that you -- do you view  
23 that as a more preferable approach?

24                   MR. ATKISSON: This gives me an  
25 opportunity to take off my business hat and talk about



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1 being a citizen from Kerrville. Because of where I  
2 work, I get to look across that area a lot. And, first  
3 of all, I'm very, very fortunate. Not very many people  
4 get to go to work and get to have the view that I have.

5           Where you're talking about doing that, we  
6 have two ways off I-10 that you get into Kerrville, and  
7 we have two gateways to our town. If you did that on  
8 that one, I don't -- coming off that big hill, coming  
9 into Kerrville and seeing nothing but power lines across  
10 the gateway to our city I think is very detrimental to  
11 our town and the growth of our town, and I hope you can  
12 understand that. I'm not giving you excuses. I'm just  
13 trying to tell you what things are on my heart, sir.

14           COMM. ANDERSON: Even if they were  
15 monopoled, because the Judge did recommend monopoling  
16 through the community that --

17           MR. ATKISSON: I think it's just a  
18 distraction, and I think that if somebody comes into our  
19 town and -- you know, we only have those two spots that  
20 you can really get off to come into our town. And when  
21 you come off that hill and you see nothing but power  
22 lines running across -- it has to be close to Interstate  
23 10 where it crosses 16 -- I think it would be a very big  
24 distraction.

25           Also from the economic part of our town,

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1 when you get off the interstate there, we have -- we  
2 actually have four corners there, and only one of them  
3 is developed. We have three other corners that are yet  
4 to be developed. And I just think that is so important  
5 to the growth of our town and our community, to leave  
6 that property alone so we can develop that area.

7 COMM. ANDERSON: Well, because you're a  
8 businessman, I actually want to follow this up because,  
9 again, I frankly never noticed transmission lines much,  
10 even though actually I drive under one that's I guess  
11 City of Austin on a residential street. And it's  
12 actually a transmission line, albeit a lower voltage  
13 than these, about a block north of the apartment  
14 building which we own.

15 But, you know, I'm from Dallas and I -- I  
16 mean, you just don't notice the transmission lines that  
17 run even through the city, much. They're actually green  
18 space. You know, the right-of-way that cuts through  
19 residential neighborhoods, people use them as parks.

20 Out where my folks live -- and they live  
21 in the Hill Country -- because in LCRA, there's an LCRA  
22 power plant that preexisted the neighborhood -- they're  
23 criss-crossed by everything, by double 345s, by -- well,  
24 I don't even know there's anything but 345s out there.  
25 But in any event -- and it didn't -- they run over the

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1 parking lots of the strip of what amounts to Main Street  
2 where there are lots of -- where the commercial area is,  
3 it hasn't seemed to have affected that.

4                   And I'm not trying to argue. I understand  
5 the concern and the fear. I just -- that just doesn't  
6 seem to have slowed down development where I've seen  
7 them, the commercial development in particular. Now,  
8 you know, I do -- I'm not trying to get on a slippery  
9 slope of what's more valuable. But with respect to at  
10 least commercial development, light commercial, it just  
11 doesn't seem to have really adversely affected that.  
12 You know, the businesses locate where they think there  
13 are people and customers.

14                   And I'm trying to keep -- I'm keeping an  
15 open mind on all this. I'm just really -- but this is  
16 one issue that I've been struggling over.

17                   MR. ATKISSON: I can appreciate that. I  
18 had the pleasure of living in Austin quite a few years  
19 ago, and there's a reason I chose to live in the  
20 country. And I share that feeling with a lot of my  
21 friends and neighbors and customers that are in this  
22 room. And I think the -- I hope that part of the  
23 messages that your getting is: We live there because we  
24 went there when it's what it was and what it is.

25                   And, ironically, we have a -- I'm a little

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1 embarrassed about this -- but ironically in Kerrville,  
2 we have a very nice new road, and it's been there now  
3 about a year-and-a-half. And my wife and I were driving  
4 out down that road -- and it's beautiful land, and it  
5 will be developed one of these days -- and we go over a  
6 big hill, and I'll be durned, here runs a big old power  
7 line across that -- right across the highway. And I  
8 guess, because of being where I'm from and getting to  
9 live where I live, I notice all those things. And I'm  
10 amazed when I came down 5th and Lamar today -- I used to  
11 work on the corner at Capital Chevrolet, and it was a --  
12 it's not the way it used to be. It's changed a whole,  
13 whole bunch.

14                   And I hope you'll hear the message, I hope  
15 that most of the people are delivering today, is that we  
16 just love where we live and we want to keep it as much  
17 as we can, as long as we can. And I would also say,  
18 being as I come to any big city -- Dallas, Houston,  
19 Austin, wherever it might be -- I think you can put up  
20 another building and another power line and it won't be  
21 noticed very much. But I think when you start doing  
22 things like that out where we don't have them, it makes  
23 a big difference. It makes a big difference to me and  
24 makes a big difference to us. I'm sorry. I can't speak  
25 for everybody else, but it makes a big difference for

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1 me.

2 I'm going to say something real selfish  
3 about my picture of the store. That flag pole that's  
4 out in front of my store, it's 100 foot tall, and it has  
5 a pretty good size flag on it. It's a 30 by -- by the  
6 way, I didn't put that there. I mean, it was there when  
7 I bought the store when I came to town, but I'm also  
8 glad that Mr. Benson, when he built the store, put it  
9 there.

10 But if those power lines come down through  
11 there and criss-cross across Interstate 10 or down I-10,  
12 if they come on my property, I'm not sure I'm going to  
13 have to take the flag down. But that flag is very, very  
14 important to me, and it's very, very important to a lot  
15 of people that live in the Hill Country. And I'm not  
16 making this up, but there's very seldom a week goes by  
17 that somebody doesn't stop me and say, "You know, I come  
18 over that hill down I-10 and I know I'm home when I see  
19 that flag," or "When I'm coming from Fredericksburg and  
20 I'm coming down 16, when I cross -- top that hill and I  
21 see the flag, I know I'm home."

22 And I would hate to see that flag go away,  
23 not because it's just the flag but what it stands for,  
24 for being home and what it means to the people that live  
25 in the Hill Country.

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1 CHAIRMAN SMITHERMAN: Previously I had a  
2 discussion with the Mayor about this religious center or  
3 memorial, whatever it is behind your store.

4 MR. ATKISSION: Yes, sir.

5 CHAIRMAN SMITHERMAN: I'm looking at an  
6 attachment to LCRA's third response for information,  
7 Cecil Atkission. This is Kerrville Exhibit No. 12?  
8 Anyway, this is a picture of your store with proposed  
9 lines going behind your store.

10 MR. ATKISSION: Yes, sir.

11 CHAIRMAN SMITHERMAN: Tell me how far back  
12 your property goes before it becomes the property of  
13 this religious center.

14 MR. ATKISSION: It is not very far. If  
15 you looked at the bigger picture that you might have  
16 like this.

17 CHAIRMAN SMITHERMAN: Right.

18 MR. ATKISSION: Okay. The terrain rises  
19 right there behind the dealership, and it goes up that  
20 way probably, from the back of the showroom floor,  
21 75 feet, maybe 100. And I'm real bad on measurements  
22 but it's not very -- it's not very far. It's a typical  
23 deal for me. I thought I owned it all till he bought  
24 it, so here I am.

25 (Laughter)

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1 MR. RODRIGUEZ: This might help.

2 CHAIRMAN SMITHERMAN: I'm sorry, Ferdie.  
3 Yes.

4 MR. RODRIGUEZ: This might help. This is  
5 another one of those pictures we took. It's Sheet 26 of  
6 28. And, Commissioners, I think that might answer that.

7 CHAIRMAN SMITHERMAN: Right. Okay.

8 COMM. ANDERSON: Yes.

9 CHAIRMAN SMITHERMAN: So do you own back  
10 to the yellow line?

11 MR. ATKISSION: Yes, sir.

12 CHAIRMAN SMITHERMAN: Okay.

13 MR. ATKISSION: Wait just a minute.

14 CHAIRMAN SMITHERMAN: I'm talking about  
15 the solid yellow line behind your store that has some  
16 green space between where the asphalt stops and where  
17 this caliche road takes up, leading up the hill. Is  
18 that your property?

19 MR. ATKISSION: I'm sorry, sir. I was  
20 trying to figure something out. Would you ask me that  
21 one more time?

22 CHAIRMAN SMITHERMAN: Well, let me point.

23 MR. ATKISSION: Okay.

24 CHAIRMAN SMITHERMAN: I'm talking about  
25 this area between your store and your pavement and the

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1 dirt road, this undeveloped area. Is that your  
2 property.

3 MR. ATKISSION: I would say my property  
4 runs about halfway between that yellow line and the red  
5 line.

6 CHAIRMAN SMITHERMAN: Oh, okay.

7 MR. ATKISSION: You're getting pretty  
8 close.

9 CHAIRMAN SMITHERMAN: All right. Okay.  
10 So how do you feel about this proposal to run these  
11 lines and poles behind your store?

12 MR. ATKISSION: I'm very, very concerned  
13 about people that live in the Hill -- I'm not very --  
14 I'm concerned about my business aspect, that all the  
15 power lines. I don't know that people are going to come  
16 up and want to look at cars and be conducive to the  
17 atmosphere that we have in my store, with a bunch of  
18 power lines running across the back of it, sir.

19 CHAIRMAN SMITHERMAN: Well, you're a Chevy  
20 dealer, and I assume one day you'll be selling a Volt.

21 (Laughter)

22 MR. ATKISSION: I would say that I'm very  
23 fortunate. I do have one of those, and that's the only  
24 reason, is because I'm close to Austin. But I -- yes,  
25 sir, I'm sure I will, and I hope I get a bunch of them.



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1 CHAIRMAN SMITHERMAN: Anything else for  
2 Mr. Atkission?

3 COMM. ANDERSON: Thank you.

4 CHAIRMAN SMITHERMAN: Great. Thank you.

5 MR. ATKISSION: Thank you very much to  
6 take the time to hear me.

7 MR. HENKE: Mr. Chairman, Charlie Henke  
8 for intervenor CYH Ranch, and we have a witness whenever  
9 it pleases the Commission.

10 CHAIRMAN SMITHERMAN: All right. Come on  
11 down. Thanks for coming.

12 MS. YANT: Good afternoon, Commissioners.  
13 My name is Elizabeth Yant --

14 CHAIRMAN SMITHERMAN: Hold on. Let's hold  
15 it down so we can hear the witness, please.

16 I'm sorry. Start over.

17 MS. YANT: Good afternonn. My name is  
18 Elizabet Yant, and I am a landowner affected by MK15  
19 route. And it's in the southeast part of the survey  
20 area, Commissioner Smitherman, that you referred to.  
21 And it's just south of Highway 16. It's Segment C6.

22 Specifically, Segment C6 -- and my counsel  
23 is here with a graphic that might help you see it  
24 visually -- Segment C6 in its original route would  
25 bisect my property on a diagonal along no existing

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1 right-of-way. I have participated in these  
2 proceedings --

3 CHAIRMAN SMITHERMAN: Hold on. I'm sorry.  
4 I'm still trying to find it. Where is it?

5 COMM. ANDERSON: I think it's -- is this  
6 the --

7 MS. YANT: It goes south of the area where  
8 Tierra Linda is.

9 COMM. ANDERSON: It's C6.

10 MS. YANT: And you cross Highway 16.

11 CHAIRMAN SMITHERMAN: Oh, there it is.  
12 Okay. Got it.

13 MS. YANT: Got it?

14 MR. JOURNEAY: And if you looked at our  
15 briefing material, the Attachment 9 is going to show you  
16 the specifics.

17 CHAIRMAN SMITHERMAN: I'm sorry. Go  
18 ahead.

19 MS. YANT: Okay. I participated in these  
20 proceedings as an intervenor on behalf of my mother, my  
21 sister and myself under the name of CYH Ranch. I would  
22 ask that the Commissioners consider a landowner  
23 modification that my counsel addressed at the hearing on  
24 the merits with LCRA TSC and the PUC Staff, and it is  
25 part of the evidentiary record.

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1 Prior to the prehearing in September, I  
2 corresponded with LCRA TSC staff to propose this  
3 modification. I participated in the intervenor process,  
4 attended the prehearing. I submitted the filings,  
5 attended the entire hearing on the merits. And I've  
6 engaged legal counsel to represent me in the entire  
7 process.

8 The modification that I'd propose and  
9 agreed with LCRA TSC and PUC Staff would move the route  
10 that bisects my property on a diagonal and not  
11 paralleling any existing compatible right-of-way to a  
12 line that parallels the existing NextEra or Horse Hollow  
13 line just north and east.

14 CHAIRMAN SMITHERMAN: Now, would that  
15 still be on your property?

16 MS. YANT: No. The agreement that we  
17 discussed with LCRA and with the PUC Staff would move  
18 that north and east of our property and parallel the  
19 NextEra line, which is north and east of the property.

20 CHAIRMAN SMITHERMAN: Well, what does the  
21 property owner that it would be placed on think about  
22 this?

23 MS. YANT: Well, both of them have -- are  
24 notified landowners, and that was agreed in the record  
25 and discussed at the hearing on the merits, that the --

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1 when you cross that line and parallel the NextEra line  
2 that the properties that you affect with that were  
3 noticed landowners. In fact, one of them was a -- filed  
4 as an intervenor.

5 CHAIRMAN SMITHERMAN: Okay. This looks to  
6 me like a different type of adjustment than the ones  
7 we've been talking about before where people are saying  
8 I know it's going to be on my property, I want you to  
9 follow it this way or that way rather than going across  
10 it. This actually takes a line that would be on your  
11 property and puts it on someone else's.

12 MS. YANT: Correct. And this is what we  
13 discussed. In fact, there's an extended discussion in  
14 the hearing on the merits record in which the PUC Staff  
15 acknowledged that it would do this and agreed that it is  
16 possible. And in fact, even in the PUC Staff filing  
17 recently on the exceptions that they -- that they filed,  
18 they agreed with the modification. And PUC Staff in the  
19 hearing on the merits even recommended this  
20 modification.

21 CHAIRMAN SMITHERMAN: So, Ferdie, help me  
22 out on this because I'm starting to get confused. Maybe  
23 it's been a long day. But her statement is that this  
24 landowner that would now get this line had been -- had  
25 been noticed. I guess that potentially the entire

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1 NextEra line was a candidate for having a line -- a new  
2 line next to it. Is that --

3 MR. RODRIGUEZ: Both landowners were  
4 noticed. They didn't participate. This is one of the  
5 ones that we called an Attachment 13 route modification.  
6 It is one that we looked at. We costed it out, and we  
7 said it is feasible and if ordered to build it we would  
8 do so.

9 And during the hearing I did talk to  
10 Mr. Ally just to make sure that we understood that this  
11 is what he was talking about. And I think Ms. Yant is  
12 correct -- I think that's what she's talking about, the  
13 extended discussion, because I asked Mr. Ally if this in  
14 fact is what you're recommending and he responded in the  
15 affirmative. But it does take it off their property and  
16 puts it on noticed -- other noticed property owners.  
17 And if I remember correctly, it even requires us to  
18 cross over the NextEra line.

19 MS. YANT: That is correct, and that was  
20 in the record, the discussion on that.

21 CHAIRMAN SMITHERMAN: But in terms of  
22 routes -- route segments that have been discussed and/or  
23 embodied on any of these maps, whether it's in the  
24 filing or in the PFD, there presently is not a route  
25 segment that takes this route north along the eastern

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1 side of the gen tie and then takes it west.

2 MR. RODRIGUEZ: Mr. Chairman, I've been  
3 advised we intentionally stayed on one side of the gen  
4 tie. We did not try to jump back and forth, if that was  
5 your question.

6 CHAIRMAN SMITHERMAN: Well, my question  
7 is -- I'm putting myself in the place of this landowner.  
8 Is this landowner here, by the way? Not even here.

9 I'm putting myself in the place of this  
10 landowner who has seen a map and on that map C6 does  
11 not, at least in this particular portion, does not cross  
12 his or her land, and now the proposal is to put it on  
13 his or her land without their permission.

14 MR. RODRIGUEZ: Mr. Chairman, I think  
15 you're right. The other landowners did not participate.  
16 And if I was the other landowner --

17 CHAIRMAN SMITHERMAN: If you can get their  
18 permission, fine. But I'm not going to go for it  
19 without their permission.

20 COMM. ANDERSON: Well, there's two -- if I  
21 look at the materials, there's two -- there's two  
22 suggestions, one of which has an attachment -- one of  
23 which has the line crossing the NextEra, which is what  
24 we're looking at. But then there's another that takes  
25 it just south of the NextEra line along the -- along the

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1 property line. It looks to me like the property line.  
2 Is that --

3 MR. JOURNEAY: That was Page 44 of the  
4 attachment --

5 CHAIRMAN SMITHERMAN: Right.

6 COMM. ANDERSON: There's 43 of  
7 attachment -- corrected Attachment 13, and then there's  
8 Page 44 of corrected Attachment 13.

9 MR. HENKE: Excuse me, Commissioner. My  
10 name is Charlie Henke. I'm counsel for CYH Ranch. We  
11 had a three-way stipulation in the hearing, and Page 44  
12 was actually removed from that exhibit. So I'm -- it  
13 actually should not even be before the Commission. Page  
14 44 was removed as part of a three-way stipulation.

15 CHAIRMAN SMITHERMAN: Among whom?

16 COMM. ANDERSON: Stipulation with whom?

17 MR. HENKE: LCRA TSC and PUC Staff. I  
18 mean, it was raised at the hearing on the record. It  
19 was withdrawn.

20 COMM. ANDERSON: That runs counter to what  
21 LCRA just said, that they did not want to cross the  
22 NextEra line.

23 COMM. NELSON: I think what they said was  
24 they didn't provide a route that would cross the NextEra  
25 line.

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1 MR. HENKE: That's correct.

2 COMM. ANDERSON: But you stipulated to  
3 what?

4 MR. HENKE: To withdrawing Page 44 from  
5 that exhibit. And in fact, at the hearing, I made sure  
6 that Page 44 had been removed from the exhibit, which is  
7 why I'm surprised that Page 44 is before you, because we  
8 stipulated on the record that Page 44 was being removed  
9 and then physically removed Page 44 from the exhibit so  
10 there wouldn't be any confusion on this issue.

11 CHAIRMAN SMITHERMAN: I mean, that's  
12 interesting, because I could actually be for Page 44,  
13 but, you know, I'm not for Page 43.

14 COMM. ANDERSON: Yeah, I'm --

15 MR. JOURNEAY: Well, in fact 44 could be  
16 done under the minor deviation.

17 CHAIRMAN SMITHERMAN: Yes, that's correct.

18 COMM. ANDERSON: Page 44 can be done under  
19 the minor deviation regardless --

20 CHAIRMAN SMITHERMAN: Whereas 43 can't  
21 without the approval of that landowner.

22 COMM. ANDERSON: Not under our standard  
23 ordering.

24 MR. RODRIGUEZ: Mr. Chairman, would it be  
25 possible if I could have Ms. Morgenroth explain that?



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1 Ms. Morgenroth is our case manager and she probably has  
2 the best command of the facts on this.

3 CHAIRMAN SMITHERMAN: Okay.

4 MS. MORGENROTH: Sara Morgenroth, LCRA  
5 TSC. I'm going to try to walk you through where we  
6 parallel NextEra and then it gets to this C6 area. If  
7 you look a little bit back to the east, Segment C11 and  
8 Segment C10 parallel on the north side of the NextEra  
9 line.

10 CHAIRMAN SMITHERMAN: Hold on. Wait,  
11 wait, wait, wait.

12 MR. HENKE: This purple might help them --

13 COMM. ANDERSON: Okay. Start over again.

14 MS. MORGENROTH: Okay. I'll start over  
15 again. So if you -- and actually the gentleman's map up  
16 here also shows this in a really big version. But if  
17 you see C11, just a little bit to the east of C6 --

18 COMM. ANDERSON: Oh, you are across the  
19 north side.

20 MS. MORGENROTH: We're on the north side.  
21 You can't see it on that map, Commissioner Nelson,  
22 that's correct.

23 CHAIRMAN SMITHERMAN: There's C11.

24 MS. MORGENROTH: So you follow C11 and  
25 then go west. So then you see C10, Segment C10. We're

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1 paralleling NextEra on the north side. And then you can  
2 see where C6 kind of goes up to the north. And NextEra  
3 is still -- is now on the west side of C6. And then you  
4 see how C6 kind of veers off? That is following --

5 CHAIRMAN SMITHERMAN: Hold on a second.  
6 Let's let the room clear out.

7 MS. MORGENROTH: Okay. So then at C6 --  
8 C6 goes up and then it kind of angles north --  
9 northwesterly, and what it's doing is C6 is paralleling  
10 the ETC pipeline. And then NextEra is more northerly of  
11 C6, so we are not paralleling NextEra at that point.

12 CHAIRMAN SMITHERMAN: Got it.

13 MS. MORGENROTH: And then we don't pick  
14 NextEra's line back up again until we hit Segment B58A.  
15 So what she's talking about is moving it up to the  
16 NextEra line and paralleling that where we chose not to  
17 do that. When we routed this, we were following the  
18 pipeline.

19 CHAIRMAN SMITHERMAN: Yeah, I understand  
20 that. My issue is by extending it north, you're  
21 extending it onto another property owner's land.

22 MS. MORGENROTH: Right. And it's  
23 clarification -- the Attachment 13, what we did is we  
24 verified that when landowners ask us to look at a  
25 modification, we wanted to make sure it did not impact a

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1 non-noticed landowner. And that's what we did. So we  
2 looked at this and said, "Okay. Well, that landowner is  
3 noticed." But we didn't say one way or the other that  
4 we supported it. We just made the modification because  
5 we looked at it from an engineering perspective, an  
6 environmental perspective and notice. And it met that  
7 criteria.

8 CHAIRMAN SMITHERMAN: Well --

9 COMM. NELSON: You're saying it's  
10 feasible.

11 MR. RODRIGUEZ: Yes.

12 COMM. NELSON: That's all you're saying.

13 MS. MORGENROTH: That is correct.

14 MR. RODRIGUEZ: Yes.

15 CHAIRMAN SMITHERMAN: That landowner was  
16 noticed because there was a possibility of a part of  
17 this going through his or her land. But once you put C6  
18 on a map, suddenly that landowner doesn't think that  
19 this is going to go on this particular part of the land.

20 MS. MORGENROTH: That is correct. That  
21 landowner is noticed because they're within that 500  
22 foot notice corridor. But you're absolutely right,  
23 Commissioner Smitherman.

24 MR. RODRIGUEZ: Now, I do have to say  
25 there are places where we noticed folks to give the

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1 Commission the ability to make routing adjustments if  
2 you thought it was appropriate. That might be a  
3 situation like this, too. But you're right. I think  
4 you're rendition of the facts is correct.

5 CHAIRMAN SMITHERMAN: Yeah.

6 COMM. ANDERSON: I'm going to have to  
7 think about this.

8 CHAIRMAN SMITHERMAN: Yeah. So, ma'am,  
9 the NextEra line, is any of it on your property?

10 MS. YANT: No, it is not. It's very near  
11 the property line on the north part of the property.  
12 And both of those landowners, you know, certainly agreed  
13 to having that private line put on their property.

14 CHAIRMAN SMITHERMAN: So how do you feel  
15 about a private line negotiated with landowners that is  
16 what looks like to essentially be on the other side of  
17 your fence that you have to look at suddenly becoming a  
18 potential avenue for another, bigger line? I don't know  
19 if you heard earlier when I raised this as a potential  
20 policy discussion --

21 MS. YANT: -- earlier, and I find it very  
22 disappointing that that private line went through there.  
23 They approached us, my family --

24 CHAIRMAN SMITHERMAN: I'm sure they did,  
25 yeah.

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1 MS. YANT: -- and we were very much  
2 against it. And -- as we still are -- and very  
3 unfortunately have to look at it and it's very, very  
4 close to my mother's home. So I guess that -- you asked  
5 what my feelings were about it. I went through a very  
6 arduous process in doing this whole process to put forth  
7 my feeling that I don't want the power line coming  
8 through my property. My neighbors chose to have one  
9 come through theirs. So if another one has to be routed  
10 in this direction, it would seem that it could be a twin  
11 and parallel the one that's there.

12 CHAIRMAN SMITHERMAN: In other words, if  
13 they wanted one, they -- two is better?

14 (Laughter)

15 MS. YANT: Excellent choice of words.

16 COMM. ANDERSON: You know, this is not --  
17 I don't think there's any evidence in the record. They  
18 may not have intervened because they may have thought,  
19 well, that's just double my money on the right-of-way.

20 CHAIRMAN SMITHERMAN: I don't know.

21 COMM. ANDERSON: There's no way of  
22 knowing.

23 COMM. NELSON: -- speculating.

24 MS. YANT: Well, could I just add one of  
25 those landowners did in fact file an intervention?

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1                   COMM. NELSON: But I think the Chairman's  
2 point is they haven't participated because so far every  
3 route that's being considered isn't on their land.

4                   MS. YANT: But they did file as an  
5 Intervenor.

6                   CHAIRMAN SMITHERMAN: So C6 as it  
7 presently is configured on your land is parallel -- does  
8 it run parallel to a pipeline? It looks like I see the  
9 pipeline.

10                  MS. YANT: There is a pipeline that goes  
11 through there. It's an old pipeline that's grown over.  
12 The line that was originally drawn actually diverts from  
13 that pipeline is what --

14                  CHAIRMAN SMITHERMAN: Yeah, it looks like  
15 there's some kind of right-of-way running from northeast  
16 to southwest. What is that? I'm looking at -- yeah,  
17 I'm looking at this one right here. It looks like a  
18 clear brush --

19                  MS. YANT: Are you looking at like a black  
20 line -- I think what you're looking at is the property  
21 line there.

22                  CHAIRMAN SMITHERMAN: No, no, I'm looking  
23 at something that actually intersects with the box that  
24 says C6. And then --

25                  MS. YANT: Oh, that is -- that's also a

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1 very old pipeline.

2 CHAIRMAN SMITHERMAN: It looks like it  
3 terminates at what might have been a well site right up  
4 there north of your property, that clear pad --

5 MS. YANT: Yeah. I think originally in  
6 discussions with LCRA, I think they originally thought  
7 that that little diamond pad was a telecommunications  
8 tower of some sort. And they told me originally they  
9 weren't looking to parallel along NextEra because of the  
10 proximity to what they thought was a telecommunications  
11 line -- tower, but it's not. It's just an old pipeline  
12 station of some sort we think.

13 CHAIRMAN SMITHERMAN: Any other  
14 questions --

15 MS. YANT: Now, I would just urge you to  
16 consider this modification that we went to a lot of  
17 trouble to agree -- we believe makes sense. We believe  
18 it follows more of a compatible right-of-way than the  
19 one that bisects our property in half. And I would urge  
20 the Commission to please consider this modification  
21 that's part of the corrected Attachment 13.

22 CHAIRMAN SMITHERMAN: Thank you.

23 MS. YANT: Thank you for your time.

24 CHAIRMAN SMITHERMAN: Yes?

25 MR. JOHNSON: Mr. Chairman, as I mentioned

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1 earlier, I've got some clients that would like to  
2 address comments to the Commission, and then I might  
3 have a few remarks at the end on purely new topics for  
4 those that don't choose to speak.

5 CHAIRMAN SMITHERMAN: Okay.

6 MR. JOHNSON: There is Mr. Trey Whichard.  
7 Generally in terms of our clients on the B19 segments, I  
8 think we'll just move from west to east to put them in  
9 easy order.

10 MR. WHICHARD: Thanks, Rob. And thank  
11 you-all. My name is Trey Whichard, and I'm on B19B. My  
12 property is -- fronts Highway 83. Mr. Stener had  
13 referred to my property earlier when he spoke about the  
14 plane accident that occurred on my place.

15 As was mentioned earlier -- and I echo --  
16 I'm really thankful I don't have your job. And I know  
17 there is the old saying you can't please all the people  
18 all the time. But it occurs to me after listening to a  
19 lot of this and reading all the information that I have,  
20 it's going to be difficult to please some of the people  
21 some of the time.

22 (Laughter)

23 I'm also concerned, too, as we've rushed  
24 through this and the complexity of it, that there's  
25 become -- the objective has become meeting a deadline as



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1 opposed to making a good informed decision, and that  
2 worries me. It worries me that there's a lot of  
3 information that is out there that's been produced that  
4 as a group we haven't been able to collectively think  
5 through and sort through fully. The airport is just one  
6 of those issues.

7                   You know, whether or not it was part of  
8 the record, you know, the wreck that was described  
9 earlier and discussed earlier in fact is public  
10 information. And shame on somebody for not putting it  
11 as part of the public record. I mean, it's out there  
12 and it should have been known. Certainly everybody  
13 around Junction knows about it.

14                   But what's interesting to me -- and  
15 somewhat confounding, and I'm glad that the law firm of  
16 Gardere Wynne has been helping. It's somewhat regretful  
17 that I'm having to pay for this. But I've got at least  
18 average intelligence, and it's difficult to read and  
19 keep up with all of the information that goes back and  
20 forth. And as I try to read and understand and have an  
21 appreciation and respect for all of the criteria that  
22 has been set forth in terms of the decisions that go  
23 into picking a route, to me -- and I'm more than just a  
24 casual observer -- it's selective. Sometimes criteria  
25 are important for certain parts of the routes and

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1 sometimes those criteria are unimportant. As I  
2 mentioned, it's just confounding to me in trying to get  
3 an appreciation and understanding for why we're choosing  
4 what we're choosing.

5 For example -- and believe me, you know,  
6 inasmuch as a tax/ratepayer, I'm going to be footing  
7 part of this bill. It does please me to hear the  
8 discussion around cost and the concern over costs. And  
9 at some point, maybe over a beer, I'd like to talk about  
10 the whole of the project and how expensive the thing is  
11 and what we're getting out of it. But inasmuch as we  
12 think about cost, what is puzzling to me is why  
13 sometimes -- or rather the focus tends to be on  
14 incremental costs of this versus that as opposed to  
15 talking about the whole of it.

16 For example, if we stayed on the preferred  
17 route and it's \$40 million cheaper than the MK15 route,  
18 \$40 million cheaper. And it follows more of the  
19 criteria than does MK15. And there's a lot of talk  
20 about MK15 being compatible with I-10. The fact is that  
21 when you go through and map it, it only follows -- 28  
22 percent of the route follows I-10. So there's a big  
23 chunk of that route that's not even on I-10.

24 However, getting back to the cost point,  
25 if we went with the preferred route, that's \$40 million

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1 cheaper. So why haven't we had, you know, more  
2 discussions around -- around that when we talk about the  
3 cost element? A little bit ago it was interesting to  
4 me -- and just quick math -- at \$300,000 a mile using  
5 monopoles over the lattice towers -- if we went with the  
6 preferred route and at \$300,000 a mile substituted  
7 lattice towers with monopoles, the cost comes in  
8 identical to the MK15 route. And there again, it meets  
9 more of the criteria set forth by someone with respect  
10 to the decisions that go into these routes.

11           The airport issue is a complicated one.  
12 Certainly more so than I'm able to articulate. However,  
13 what's interesting is I'm at the top of the hill --  
14 quote, "hill," unquote. And I drive past the airport --  
15 in fact, I land at the airport. I own an airplane. My  
16 partner is a pilot and I'm not. And the pucker factor  
17 coming in and out of that airport is tremendous. And  
18 particularly when the lady on the radar is telling you  
19 "warning, warning, warning, obstacle." And then there  
20 are towers south of town sitting on top of those hills  
21 that when you're taking off to the south -- or  
22 approaching from the south -- you've got to be very  
23 careful of. And it's discerning (sic) I'll tell you.  
24 And as Mr. Stener mentioned earlier, you know, the  
25 approaches taking off in the summertime, those guys come

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1 over my ranch in the summer and you can read their tail  
2 numbers on the plane.

3 And there was some commentary earlier -- I  
4 don't remember by who, perhaps by LCRA -- about being  
5 such a safe distance away from the airport. My property  
6 line, as the crow flies, may be a half a mile from the  
7 north end of that runway. And when you've got to take  
8 off to the north in the summertime, it's really -- it's  
9 frightening, quite honestly.

10 But what I wanted to say beside all that  
11 is there is no hill up there. It's just up. It goes  
12 up. My property is 500 feet above the runway elevation.  
13 There's no hill. You can't run behind a hill and hide  
14 behind -- you know, you drive through Kerrville, for  
15 example and you see a hill and you see another hill.  
16 This is just up.

17 There's canyons that run through there  
18 which go down. They're not contiguous. I suppose  
19 perhaps what they're suggesting is they can snake their  
20 way through the canyons at some point. But once again  
21 they're not contiguous. I can tell you going across 83  
22 there's no canyon. If you were to leave my property and  
23 continue east towards the Scott's property and Ken  
24 Hirmas, for example, there's no canyon that connects the  
25 west side of 83 to the east side of 83.

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1                   So while you may be able to go down for  
2 some, you're going to pop back up for others. And it's  
3 not just the pole that becomes a problem. It's the  
4 line -- it's the line. The whole length of it is a  
5 problem. The information that I've read suggests there  
6 hasn't been a complete and thoughtful enough  
7 understanding as to what exactly the issues are putting  
8 the line south of the airport. From what I read,  
9 erosion issues aren't a concern. That's been discussed  
10 by engineers qualified to do such an analysis.

11                   So once again, you know, I'm confounded by  
12 why you have pretty thoughtful -- certainly from  
13 landowners such as myself -- who have paid for  
14 engineering studies and done these analyses. But then  
15 yet again you get -- we tend to start moving down this  
16 path and riding a wave of believing what we hear. And  
17 what we're hearing is incomplete and that concerns me,  
18 particularly as this runs through my property. But, you  
19 know, the whole of it is, I suppose, that if it is --  
20 if, you know, the character that trumps all other  
21 factors, or the criteria, rather, that trumps all other  
22 factors is compatible right-of-way, we wouldn't be on  
23 I-10. We would be on -- following the Horse Hollow line  
24 or the P routes. You know, if it were costs that we  
25 were concerned about, we wouldn't be talking about

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1 anything other than the MK13 route, and we'd be focused  
2 on using monopoles that unanimously have been  
3 recommended by the -- by the public, by the community.  
4 And when you think about the whole of the cost, and you  
5 think about using the preferred route, together with the  
6 monopoles, it's no different than MK15.

7 So rather than go on and on, I'll stop it  
8 at that and once again thank you guys for a pretty full  
9 day of some complicated and emotional issues. With that  
10 I'll pause and let you ask any questions.

11 CHAIRMAN SMITHERMAN: Questions?

12 COMM. NELSON: I don't have any.

13 CHAIRMAN SMITHERMAN: Thank you.

14 MR. WHICHARD: Thank you.

15 MR. JOHNSON: Next we've got Mr. Brent  
16 Scott.

17 MR. SCOTT: Good afternoon.

18 CHAIRMAN SMITHERMAN: Howdy.

19 MR. SCOTT: First let me say thanks for  
20 allowing me to talk. We -- my family and I came a long  
21 way today to sit in front of you and I was hoping that  
22 we had a chance to talk to you. My dad used to tell me,  
23 "Son, don't ever be a judge for a beauty contest. Never  
24 judge a baby contest." He never did mention being a  
25 judge at an ugly contest. And I feel sorry for the

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1 three of you that have to make this decision, because  
2 this a tough one. I do appreciate your professionalism.  
3 And I -- I hope that you'll hear me out on some of the  
4 issues that we have.

5 I can talk to you about how much I love  
6 the Hill Country and the land, and I intend to. I could  
7 mention that our ranch has been in our family for over  
8 six generations, and it has.

9 Do I want a power line? No, I don't want  
10 it. I don't like what it's going to do to the value of  
11 the property, and you know all those things. But, you  
12 know, one thing that looms in my mind is the safety  
13 issue. It's 1.9 miles from the corner of my property to  
14 the end of that runway. And we're definitely on the  
15 downwind side of the traffic pattern for that airport.  
16 The towers are going to be on the hills. I know there  
17 are those that try to convince you they can bury them in  
18 the valleys and that they can mitigate it. And the fact  
19 is they can't, because no valley runs straight across,  
20 and no valley runs continuous to another valley and  
21 sooner or later they're going to rear their head and  
22 they're going to be on top of those hills.

23 Those hills are already an issue in safety  
24 as we've already had one crash there and two killed and  
25 there's no lines there to avoid now, no power lines, no

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1 poles. But there will be if you decide to take this  
2 loop around that side.

3 I'm a pilot, flown in and out of there a  
4 jillion times. And I'll tell you right now, it's  
5 daunting to go in and out of that airport on that side.  
6 Adding the power lines to that side is just not a  
7 responsible thing to do. It's just dangerous for a  
8 pilot.

9 My son is a pilot. He's a professional  
10 pilot. And he'll tell you the same thing, that it's a  
11 dangerous thing to do. And I'll talk about him just a  
12 little bit more in a minute.

13 Another thing I want to voice is the undue  
14 hardship that's going to be put on us. My family -- my  
15 niece and I -- for where this routing is going to go,  
16 we're lucky enough to be at the corner where you turn.  
17 So we're going to get wrapped no matter how you do it,  
18 cross it and down one side and down the other and we're  
19 wrapped.

20 CHAIRMAN SMITHERMAN: Sir, exactly where  
21 is your property.

22 MR. SCOTT: We're on B19C on 377, and  
23 we're where you turn to cross 377. So if they cross us  
24 as they originally wanted to do and then head south,  
25 they wrap us on two sides. If they hit the property



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1 line on the west side, as they talked about, they'll be  
2 on top of a hill right there, I promise you, because it  
3 runs from one side of the ranch to the other. And then  
4 they're going to head south and then across the front of  
5 the property. So it will be wrapped that way, too.

6 The other issue is going to be the towers.  
7 They say they can use shorter towers. I'm just a  
8 country boy, but in my way of thinking if you say you're  
9 going to use shorter towers, then you must admit that  
10 there's a problem in the height of those towers and that  
11 there could be an issue with aircraft going in and out  
12 of there or you wouldn't need to use shorter towers.

13 We're lucky enough that -- I looked at a  
14 manual that the FAA is going to have those towers  
15 painted orange and white, so we get to look at those.  
16 And there will be more towers because they're shorter.  
17 The right-of-way won't be a hundred feet wide, it will  
18 be 200 feet wide, so they'll clear cut that. And that's  
19 an undue burden that no other landowners have to put up  
20 with.

21 And the other thing is we don't just get  
22 to enjoy them during the day. They're going to have  
23 lights on them so we get to enjoy them during the night,  
24 too. So even the cover of darkness doesn't take care of  
25 that issue.

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1           But it still comes back to safety. This  
2 meeting -- this meeting is particularly poignant to me  
3 because I said earlier my son is a professional pilot,  
4 and he is. He's a United States Marine pilot. And he  
5 would be here today except he's preparing to leave in a  
6 week for his second deployment in Afghanistan. And he  
7 talks to me about this, and he says, "Dad, the very  
8 thing I'm fighting for in Afghanistan is property  
9 rights. And when I come home, they're going to be  
10 diminished on the land that I'm fighting for."

11           But he'll tell you that it's about safety,  
12 too. It's just not a safe place to put those power  
13 lines is that loop going around. He'd be here if it  
14 weren't for that fact.

15           You know, you heard the judge say earlier  
16 if you can mitigate it, it's okay. I don't believe you  
17 can. I don't believe you can mitigate it. And why  
18 should you when you've got other choices? Why should  
19 you have to try to mitigate it? It's a dangerous thing  
20 to do, and if someone hits a power line and you had  
21 alternative choices, wouldn't that be the thing to be  
22 thinking about now rather than later on? We've already  
23 had one fatal accident where they're not there. What  
24 are the odds if they are there?

25           Commissioners, I'll tell you that I agree

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1 with you about being concerned earlier in the testimony  
2 about the LCRA using their discretion to work for  
3 solutions. Based on the testimony I heard here today,  
4 they don't want to work around going down to the south.  
5 They just don't want it. So after you make your  
6 decision and you leave and you're done with it, there  
7 won't be -- we won't get a second chance to come back  
8 and say, "Hey, look, they said they would, but they  
9 didn't." And they really didn't want to and they  
10 testified today they didn't want to, and pretty  
11 vehemently I might add.

12               So my concern is I do believe you're going  
13 to have to be prescriptive in your order, if that's in  
14 fact what you decide to do. I think you're going to  
15 have to be prescriptive in it and not just count on it.  
16 That would be my concern as a landowner.

17               All things considered, costs and meeting  
18 all the standards of the preferred route is probably the  
19 one that meets all those criteria. I'm glad I don't  
20 have to make this decision and I wouldn't wish it on my  
21 neighbors and I certainly don't wish it on me.

22               Following the existing right-of-way a P  
23 line follows that the most. Saving money or costs goes  
24 back to the preferred line, \$40 million. And I somehow  
25 cannot do the math as a country boy that says that you

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1 can bury a line for 1500 to 2500 feet for \$57 million  
2 when I watch -- and know for a fact where I live now  
3 they built the Eisenhower tunnel for a lot less and  
4 there's -- and it's four lanes going both ways with  
5 semis going through it. So I don't know about the math,  
6 but \$57 million gets you 2500 feet and 70 million gets  
7 you a mile. That doesn't add up. Shouldn't it be \$114  
8 million if it's a mile? It doesn't add up. I'm just  
9 saying -- I've heard about the government getting  
10 charged \$600 hammers, but I don't know about \$57 million  
11 for 1500 to 2500 feet. I just say we ought to scratch  
12 and sharpen our pencil on that one.

13 I appreciate you letting me come up here  
14 and talk. It's six generations and I know my dad would  
15 have wanted me to. I know my son wants me to and is  
16 expecting a full report when I get out of here. And I'm  
17 talking for my niece, too, as we operate the ranch  
18 together as my brother just passed this last year and  
19 she now takes stewardship of his undivided half.

20 I thank you, and I don't envy you your  
21 position. I appreciate your professionalism and I pray  
22 that you'll weigh this loop heavily when you do have  
23 alternatives. Thank you.

24 CHAIRMAN SMITHERMAN: Thank you.

25 Questions?

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1 COMM. ANDERSON: No.

2 MR. JOHNSON: Just a few very brief  
3 remarks, Mr. Chairman. First, I'd like to address  
4 Commissioner Anderson's question about the major  
5 deviation clause, and the one concern that I have is it  
6 would depend entirely on what route LCRA would be  
7 deviating from. If the ordered route were actually  
8 including the B19 loop, then in order to have a major  
9 deviation that would put everything south of the  
10 airport, my understanding would be you would have to  
11 have the agreement of all of the landowners that are on  
12 the existing MK33 as well as the landowners that are  
13 creating the new southern --

14 COMM. ANDERSON: You'd have to have the  
15 consent of all the landowners across which the line  
16 would go, the modification would go. That's correct.

17 MR. JOHNSON: And if I were representing a  
18 landowner on the existing MK33, I can't imagine why they  
19 would say yes.

20 COMM. ANDERSON: You'd be surprised.  
21 This -- the genesis of the paragraph actually came from  
22 one of the early cases where you had neighbors who said,  
23 you know, what -- I remember the guy sitting right about  
24 in the middle section saying, you know, I like  
25 electricity, and we're a growing state and we've got to

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1 have power lines, put them on my property. And so we  
2 came up with that language and we've kept it there  
3 because there are folks who are willing to do it.

4 MR. JOHNSON: And I can see that.

5 COMM. ANDERSON: They may also look at  
6 their property and say, you know what, you're going to  
7 pay me to put this line across. I don't mind looking at  
8 them and you're going to pay me, so sign me up. So  
9 there's a lot of reasons why people take them.

10 MR. JOHNSON: And might I just suggest it  
11 would -- it would be more straightforward and allow for  
12 requiring fewer agreements if there were some way to  
13 create an order to take the line south of the airport if  
14 you can build above ground if you can't go north, and  
15 then you have a major deviation clause that would apply  
16 either way. That's just a suggestion. Obviously today  
17 was the first time I contemplated such an idea, so it's  
18 not fully thought out.

19 CHAIRMAN SMITHERMAN: You know, I won't  
20 speak for my colleagues, but I think all of us generally  
21 would like to go south. It's just the cost that we were  
22 hit with of a delta of, you know, 50-plus million  
23 dollars, at least from my perspective, made that an  
24 undesirable choice. If somehow we could thread the  
25 needle and it's not 50 million and we don't have to bury

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1 it and we can hopscotch through the floodplain and all  
2 that, I'd be fine with that.

3 COMM. ANDERSON: Yeah, I'm not opposed to  
4 the -- it is more direct, for example. And it parallels  
5 a compatible right-of-way more or less. Of course, I  
6 guess, in this case we'd be deviating actually further  
7 south potentially --

8 MR. JOHNSON: But for a shorter  
9 distance --

10 COMM. ANDERSON: But for a shorter  
11 distance. So even if the cost of the deviation were  
12 greater for whatever reason, whether it's land  
13 acquisition or whatever, you might be able to make it up  
14 because of the eliminating the loop, a flattening out  
15 the line.

16 MR. JOHNSON: And that's one interesting  
17 thing. It's easy to compare the statistics if you're  
18 talking about just flattening out the loop, because if  
19 you take Staff's MK15 and flatten out the loop, you end  
20 up with what got christened MK15 Segrest. So it's a  
21 very straightforward way to compare the statistics.

22 And in reviewing the Chairman's memo,  
23 there were some other statistics that immediately left  
24 out that if you take that B19 detour, you cross 10 more  
25 recorded historic and prehistoric sites than if you stay

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1 on I-10. Just that one deviation impacts 10 more sites.  
2 And that's a difference of two sites if you don't take  
3 the loop and twelve if you do. It's a very large  
4 difference. And an additional 13 within a thousand feet  
5 of the centerline adds 11 more stream crossings just for  
6 that one loop.

7                   There's one significant stretch of known,  
8 occupied golden-cheeked warbler habitat in the entire  
9 study area. And if you take that loop, you go right  
10 through it. And that's .88 miles through known,  
11 occupied habitat, an additional 4.2 miles --

12                   CHAIRMAN SMITHERMAN: Of course that's  
13 cedar trees. And if you have cedar fever right now, you  
14 may feel differently about golden-cheeked warbler  
15 habitat.

16                   (Laughter)

17                   COMM. NELSON: I'm all for chopping all  
18 the --

19                   CHAIRMAN SMITHERMAN: Take them all down.

20                   COMM. NELSON: Take them all down.

21                   CHAIRMAN SMITHERMAN: Take them all down.

22                   COMM. NELSON: They weren't here in the  
23 first place. They shouldn't be here now.

24                   (Laughter)

25                   CHAIRMAN SMITHERMAN: And by the way,



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1 what's interesting to me is if you look at all these  
2 maps, particularly these over here, there's a segment of  
3 the Hill Country that supposedly still has jaguar. It  
4 still has jaguar habitat. Guess what runs right through  
5 the middle of that? The Horse Hollow gen tie.

6 (Laughter)

7 MR. JOHNSON: Yeah. And I think I would  
8 support -- if the Commission wanted to promulgate a  
9 rule -- to add allergy abatement as a factor, you would  
10 have our public comments in support.

11 (Laughter)

12 COMM. ANDERSON: Well, in the non-wind  
13 renewable portfolio standard on the biomass, that's  
14 considered non-invasive -- that's invasive species that  
15 can be cut for fuel. But that's --

16 CHAIRMAN SMITHERMAN: I mean, I'll cut to  
17 the chase on this. From sort of day one I've been in  
18 favor of using as much of I-10 as possible. Now, it  
19 was -- it was the AC Ranch's proposal and the ability to  
20 reduce the cost that lead me to take that particular  
21 path once you get on the western edge of this. And I --  
22 I would be for continuing to follow I-10 but for what I  
23 have in the PFD right now which tells me that that's a  
24 very expensive option.

25 So, you know, we're going to talk about

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1 this maybe a little bit more today and certainly at the  
2 next Open Meeting, but I kind of like the idea perhaps  
3 of a -- of an ordering that says we're going to try to  
4 go along I-10. If we can't do it, if it doesn't work --  
5 and this has to be within LCRA's discretion because  
6 they're responsible. Right? I mean, I don't think your  
7 law firm wants to indemnify them for someone getting  
8 hurt or an accident or something like that.

9 Try to do it. If you can't, then the  
10 alternative is the loop with all of the deviation  
11 paragraphs that we can put into it. I'm going to -- I  
12 don't know about you-all, I'm going to noodle on that a  
13 little bit .

14 COMM. NELSON: I am, too. I have -- I'll  
15 be honest with you. I have as many problems if not more  
16 with the northern part of that route, the one you're  
17 talking about. I have lots of problems with that.

18 CHAIRMAN SMITHERMAN: Of the loop?

19 COMM. NELSON: Yes. I am not convinced  
20 it's safe. And LCRA might be responsible, but guess  
21 who's ultimately responsible? That would be the three  
22 of us sitting up here. And I am also -- even though the  
23 judges found that it needed -- the line needed to be  
24 buried, I'm still not convinced of that. So I do need  
25 to think about it more.

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1 MR. JOHNSON: And if I could address one  
2 other issue: The question of how compatible is  
3 right-of-way to be paralleled. And it was really kind  
4 of highlighted by the Chairman's memo that the 138-kV  
5 line on the P routes is not really perhaps compatible  
6 right-of-way. But at the same time, on the B19 detour  
7 loop when it comes back down, it's paralleling 138 line,  
8 and that was cited as a plus or at least some benefit of  
9 taking the detour. And I'm really concerned if a 138-kV  
10 transmission line is not compatible right-of-way, then  
11 it's very difficult to envision that a pipeline is  
12 compatible right-of-way or a county road or a minor road  
13 or an apparent property boundary or any of the other  
14 things that are actually cited in the rule as compatible  
15 rights-of-way. I mean, the 345, as I understand it, is  
16 the biggest line in the state of Texas, and there aren't  
17 a whole bunch of them all over the place --

18 COMM. ANDERSON: -- in ERCOT.

19 MR. JOHNSON: In this particular study  
20 area, there's only two major sources of compatible  
21 right-of-way that you can parallel. It's either I-10 or  
22 it's the 138 line up north, and that's why they were  
23 added to the study area. And if -- if some of them are  
24 taken out of play, then it -- it makes your job even  
25 more difficult than it already is because there's just

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1 not a lot of stuff on this map to parallel.

2           You know, I've got to hand it to LCRA,  
3 they gave it their best shot when they chose their  
4 preferred route, it's pretty clear that what they did  
5 was they treated all statistical categories and factors  
6 as being completely equal and none of them weighted.  
7 And they found a route that was clearly superior in a  
8 whole bunch of categories and said, okay, we can call  
9 that our preferred. It's short. It's cheap. It avoids  
10 all the cities. It avoids most of the houses. We'll go  
11 with that. And those are the factors that we've talked  
12 about case after case.

13           But in doing so, there's just not a lot of  
14 compatible right-of-way to parallel. If the choice is  
15 to parallel that right-of-way, I would argue that choice  
16 should be fully embraced and you should parallel as much  
17 of that right-of-way as possible and not just grab  
18 28 percent in the middle of the route.

19           CHAIRMAN SMITHERMAN: Well, this is  
20 beginning to sound like closing argument, counsel.

21           (Laughter)

22           COMM. NELSON: Yeah.

23           CHAIRMAN SMITHERMAN: Compatible is in the  
24 eyes of the beholder. It's not a defined term.

25           MR. JOHNSON: Obviously.

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1 CHAIRMAN SMITHERMAN: And so that presents  
2 challenges. There's also no weighting. I mean, we  
3 don't give more weighting to paralleling an existing  
4 transmission line as opposed to a pipeline or a highway.  
5 And so this is where the art of the decision comes in.  
6 It's not a mathematical exercise.

7 MR. JOHNSON: And that's where the real  
8 challenge is, and that's left soundly to your  
9 discretion. And I will treat what started sounding like  
10 closing argument as exactly that and thank you for your  
11 time.

12 MR. SPRAGGINS: Hello?

13 CHAIRMAN SMITHERMAN: Yes, sir?

14 MR. SPRAGGINS: My name is Don Spraggins.  
15 May I --

16 CHAIRMAN SMITHERMAN: Grab a mic, yes.

17 MR. SPRAGGINS: All right. My name is Don  
18 Spraggins. We are property owners in Gillispie County.  
19 And -- although we live in Dripping Springs, we are  
20 property owners over there.

21 CHAIRMAN SMITHERMAN: Where exactly, sir?

22 MR. SPRAGGINS: In the southwest part of  
23 the county.

24 COMM. ANDERSON: Do you know what link?

25 MR. SPRAGGINS: I'm sorry?

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1 COMM. ANDERSON: What link?

2 MR. SPRAGGINS: B56, I believe. If it's  
3 not B56 it's B56A.

4 COMM. ANDERSON: Well, there's two.

5 MR. SPRAGGINS: So it's B56A. We're at  
6 the same location -- just past the location where B47  
7 connects and comes on down and enters -- and connects in  
8 with B56A. We're east of Tierra Linda Ranch.

9 CHAIRMAN SMITHERMAN: Okay. Got it.

10 MR. SPRAGGINS: There was some  
11 conversation earlier about landowners on either side of  
12 Tierra Linda. We fit the category of being a landowner  
13 on the east side of Tierra Linda. We have land holdings  
14 that fall in the category of a lot of other people in  
15 Gillespie County, land that's been in the family for  
16 over a hundred years, and so we have a lot of attachment  
17 to that.

18 And so because there was some mention of  
19 what property owners on either side of Tierra Linda --  
20 what views they might have -- I just wanted to address  
21 that, plus our own personal situation as it relates to  
22 the gen tie. The initial understanding of what was  
23 going -- what was going to happen goes way back. We've  
24 participated very much in this whole process. We're  
25 intervenors. Went to the first hearing or public

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1 meeting in San Angelo and attended those in Gillespie  
2 County area. So -- and intervened in the process and  
3 have followed the process to date.

4               So our situation is one that also involves  
5 the gen tie. There were several proposals earlier from  
6 the gen tie that we discussed with their  
7 representatives, as well as there were several proposals  
8 when the CREZ line came out that affected our --  
9 affected our property. And so the main thing that I  
10 wanted to point out is that you've been discussing the  
11 gen tie and what relationship it should have. Our  
12 circumstance is one that the gen tie is just east --  
13 like 500 feet -- on the east side of one of our  
14 properties. And so we have a high point on our property  
15 that's one of several in that part of the county.

16              One thing I did want to stress is that the  
17 MK15 route, in following the pipeline I think it's been  
18 stated earlier, is that it's on -- it has a very high  
19 profile. There are properties that are to the west of  
20 us that have been -- that are owned by relatives. And  
21 there are -- there is one particular point on the -- not  
22 necessarily neighboring, but the second ranch to the  
23 west from where we are that is one of the very highest  
24 points in Gillespie County. And it's marked with a U.S.  
25 Geological Survey marker. And it's marked with that

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1 marker for that reason, that it is a very high point in  
2 the county.

3           So the point I'm getting to is -- or the  
4 two points that I'm getting to are, one, the MK15 route  
5 is going to be very, very visible. The high point that  
6 we have on our property, we can see I-10 from our  
7 property, which is five or six miles away. So we'll  
8 have this high-profile power line if constructed along  
9 MK15 to our west. We already have the gen tie to our  
10 east. So in very common terms, you know, the gen tie  
11 will be our sunrise and this line would be our sunset.

12           So those are the points that I was wanting  
13 to make about our own personal --

14           CHAIRMAN SMITHERMAN: So did the  
15 developers of the gen tie approach you about putting it  
16 on your property initially?

17           MR. SPRAGGINS: Yes, they did, and we were  
18 not interested.

19           CHAIRMAN SMITHERMAN: And so it went on  
20 your neighbor's property?

21           MR. SPRAGGINS: Correct.

22           CHAIRMAN SMITHERMAN: And how far on the  
23 other side of your fenceline is it?

24           MR. SPRAGGINS: Probably 5 or 600 feet.

25           CHAIRMAN SMITHERMAN: And when that was



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1 happening, did it give you a thought that this might  
2 provide a corridor for LCRA or any other --

3 MR. SPRAGGINS: No, it did not.

4 CHAIRMAN SMITHERMAN: -- utility to put a  
5 line next to it?

6 MR. SPRAGGINS: At the time that it -- if  
7 you're asking if at the time the gen tie was coming  
8 through, we were aware -- this was very early on in the  
9 CREZ process as far as it affected us. And I don't  
10 believe at that time there was any specific information  
11 on the CREZ routing at the time we were having the  
12 discussions with gen tie.

13 CHAIRMAN SMITHERMAN: Any questions  
14 further?

15 Thank you.

16 MR. SPRAGGINS: Thank you.

17 CHAIRMAN SMITHERMAN: Anyone else? You  
18 don't have to, you know.

19 MR. FULLER: I know. I represent an  
20 intervenor who was unable to come today. And if I could  
21 just take a few minutes, Ahmand Fakhr, F-a-k-h-r.

22 CHAIRMAN SMITHERMAN: Tell us your name  
23 and where this particular property is.

24 MR. FULLER: Yes. I'm Alex Fuller of  
25 Davis, Fuller, Jackson, Keene here in Austin. He's

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1 along the C14A. It's between -- between Kerrville and  
2 Comfort -- closer to Comfort along I-10. He has I-10  
3 property.

4 CHAIRMAN SMITHERMAN: And what's the  
5 nature of that property?

6 MR. FULLER: It's just a -- it was a ranch  
7 he purchased probably about seven years ago, and he's  
8 removed all the structures off of it --

9 COMM. ANDERSON: I'm sorry, it's C14?

10 MR. FULLER: I believe it's C14A.

11 COMM. ANDERSON: A or C?

12 MR. FULLER: C maybe -- well, is there --  
13 do you see that little red line C8 running down? That  
14 bisects his property -- or B8? What is that right along  
15 there? I'm sorry, C1C --

16 MR. JOURNEAY: Or there's a C14A right  
17 there.

18 MR. FULLER: And that's C8 -- the C8 route  
19 would bisect his property.

20 COMM. NELSON: So the C14C would go around  
21 your property?

22 MR. FULLER: It would go on the edge.  
23 It's I-10. It would be I-10.

24 COMM. NELSON: Well, there's a jag --  
25 there's a proposed jag --

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1 MR. JOURNEAY: -- where it goes off of  
2 I-10.

3 COMM. NELSON: Yeah.

4 MR. FULLER: His property is right there  
5 where those two come together.

6 MR. JOURNEAY: Kind of where C1B and C8  
7 come together.

8 COMM. NELSON: Okay.

9 MR. FULLER: Right. And C8.

10 CHAIRMAN SMITHERMAN: Right in there.  
11 Here it is, Donna, right here.

12 CHAIRMAN SMITHERMAN: Oh, okay. So is  
13 there frontage on I-10?

14 MR. FULLER: Yes, sir.

15 CHAIRMAN SMITHERMAN: And how big is the  
16 property?

17 MR. FULLER: On that part -- he has --  
18 actually the I-10 cuts his property. But on that side  
19 there's almost 300 acres, 285 or something like that  
20 north. And then he has about 55 south. That's where  
21 the home is is south. I just wanted to make -- he has  
22 filed -- there's some testimony in the record that, you  
23 know, there are interested persons along that route that  
24 will be impacted if you take the I-10 preferred -- if  
25 you go I-10 all the way.

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1                    Obviously, when he purchased that  
2 property, he's thinking for his grandchildren primarily,  
3 to have a retreat for them. And he understood that I-10  
4 was there, but he had no inkling that there was going to  
5 be a large power line coming down through there. That  
6 would not be compatible with what he wants to use that  
7 property for, which is to keep it totally natural like  
8 it is with no -- he took all the other cattle and  
9 everything off of that structure when he bought that  
10 property.

11                    CHAIRMAN SMITHERMAN: But it does front  
12 I-10.

13                    MR. FULLER: Right. But having I-10 there  
14 in a rolling hill situation versus having a 180-foot  
15 tower, which would be on his property because we've been  
16 told that the LCRA has difficulty with TxDOT in using  
17 any of the I-10 right-of-way. So all of that  
18 right-of-way would have to come off his property.

19                    So, you know, when we're talking about,  
20 again, what is compatible right-of-way, it's  
21 compatible -- it's just going to be just like it was any  
22 other ranch. It's going to come off his ranch is where  
23 those structures are going to have to be built. That  
24 also -- that particular area does not have a service  
25 road. So I think access is going to be very difficult

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1 for them to come through there without building another  
2 access road, which would even take more land out from  
3 his property.

4                   You know, it seems like to me in sitting  
5 through this whole day's discussions and everything,  
6 it's a very difficult challenge for you. I understand  
7 that. But I also understand that there are a lot of  
8 people living along I-10 that are not industrial,  
9 they're not car dealerships, they're not 7/Elevens and  
10 they're not truck stops. So I think those people need  
11 to be considered, too, and that's what Mr. Fakhr is.

12                   I'll be happy to answer any questions,  
13 and -- I don't have a solution for you, but I just  
14 wanted to indicate that there are just individual  
15 landowners that live along that part, especially  
16 between -- from Comfort out to Kerrville.

17                   CHAIRMAN SMITHERMAN: Thank you. So,  
18 Ferdie, this raises an interesting issue. I assume  
19 you-all talked to TxDOT about I-10, and is there any  
20 TxDOT right-of-way that was made available or could be  
21 made available?

22                   MR. RODRIGUEZ: Not to my knowledge.  
23 Would you mind if I had Mr. Symank come up because he  
24 actually is the person that dealt with TxDOT. We talked  
25 with them extensively.

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1                   CHAIRMAN SMITHERMAN: Yeah. You know,  
2 Commissioner Anderson is really good friends with the  
3 Chairwoman of TxDOT. I can't believe --

4                   COMM. ANDERSON: I've had over the last  
5 year or so several conversations with various members of  
6 the Commission. And the impression that has been left  
7 with me is that at least the Commissioners are eager to  
8 work with you-all to facilitate. It's not evidence and  
9 it's not -- at this point -- but I certainly intend to  
10 follow up once the -- once we make a decision, once the  
11 appeal period goes by, and I -- I am contemplating  
12 adding a provision in the order permitting or -- and/or  
13 directing that if it becomes available that you use that  
14 land. Because it makes absolutely no sense to me why  
15 right-of-way would not be used in that way. And I think  
16 that the members of the Texas Transportation Commission  
17 agree.

18                  CHAIRMAN SMITHERMAN: So with that as a  
19 backdrop, tell us what your conversations were.

20                  MR. RODRIGUEZ: And if I might also, Mr.  
21 Chairman, you asked me some time ago about kind of  
22 pinning some underground numbers in Tierra Linda to the  
23 record?

24                  CHAIRMAN SMITHERMAN: Right.

25                  MR. RODRIGUEZ: That's also something that

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1 Mr. Symank was working on, and he can tell you that as  
2 well.

3 CHAIRMAN SMITHERMAN: All right.

4 COMM. NELSON: Have they changed? Have  
5 they gotten any better?

6 MR. SYMANK: A little bit. I'll address  
7 the underground first, just for some history. And,  
8 Commissioner Nelson, yes, at 138-kV we see factors of 5  
9 to 10 --

10 COMM. NELSON: Okay.

11 MR. SYMANK: -- overhead to underground  
12 345-kV. It's ironic that, you know, all of these cases  
13 y'all have seen the comments and questionnaires, too,  
14 just put it underground.

15 COMM. NELSON: Right.

16 MR. SPANGLER: We did multiple studies in  
17 multiple locations here and you do get a shock factor  
18 when you see the costs. The deceptive things -- and  
19 I'll explain the costs in a manner that will tell you  
20 what the pieces are. I took the Junction airport  
21 estimate, but then I looked at a different variation  
22 than my first reference to a number earlier because it's  
23 rock in the Tierra Linda area. I'm assuming at this  
24 point that three small ditches per circuit are less  
25 expensive to excavate than two very large ditches.

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1 There are three conductors per phase just for the  
2 conductors, not counting communications grounding,  
3 anything else. That would fit on about an 80 to 90-foot  
4 wide easement.

5 That being the case, there are transition  
6 stations on each end. They run approximately  
7 \$16,300,000. The prorated data I simply took the Kimble  
8 airport area estimate for 2500 feet, prorated it  
9 linearly. All I'm doing is adding length. That's  
10 \$35,700,000. 52 million before you add any project  
11 interest -- CAPI overheads all of that. With the  
12 different geometry that I'm assuming would be more  
13 applicable in Tierra Linda, the number is still  
14 \$62.9 million.

15 COMM. NELSON: And you would still have to  
16 clear a big swath of oak trees.

17 MR. SYMANK: Yes.

18 MR. JOURNEAY: Excuse me, Commissioners.  
19 Does -- when you're underground in this are you burying  
20 underground cable or are you having to build some kind  
21 of conduit out of concrete or something like that?

22 MR. SYMANK: You're building subsurface  
23 duct banks. Backfill is concrete. Each of the conduits  
24 is roughly 8 inches in diameter. If you know anything  
25 about conductors, it's 3500 (inaudible) milled copper,



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1 three of them per phase. That's how you end up with a  
2 lot of money invested in copper.

3 COMM. NELSON: That's crazy expensive.

4 CHAIRMAN SMITHERMAN: Crazy.

5 MR. SYMANK: Yes, yes. My jaw dropped,  
6 too. That's why we had a consulting firm with a lot of  
7 experience in underground do the estimates for us.

8 COMM. NELSON: We're starting to get  
9 punchy.

10 MR. SYMANK: Does that address the  
11 underground question?

12 CHAIRMAN SMITHERMAN: I don't know if  
13 there's any Tierra Linda people here. Just to be clear,  
14 I wasn't proposing that we would pay for it. I was  
15 going to see if they wanted to pay for it. I think that  
16 that number -- at that number, the answer is probably  
17 no. Yeah.

18 COMM. NELSON: It's over half the value of  
19 the whole acreage.

20 MR. SYMANK: Yes, it's very expensive.  
21 There was also a question earlier today about water in  
22 the underground, just to touch on that.

23 COMM. NELSON: That was by the airport,  
24 though.

25 MR. SYMANK: Well, anywhere in the

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1 underground water exists in the vaults and the conduit  
2 it's expected. You address the water issues with -- you  
3 elevate control panels on -- you know, on stilts or  
4 foundations.

5 To address the TxDOT, we met on at least  
6 two occasions with state maintenance level folks, one of  
7 the two people who at this point the way TxDOT is  
8 organized is one of the two people who would have to  
9 authorize any exceptions to the Texas Administrative  
10 Code. As y'all know they operate under the TAC. They  
11 corroborated and confirmed with us the provisions of the  
12 TAC that would require exceptions in order for us do  
13 extensively use any right-of-way. There's -- I included  
14 a copy of a letter and I've got several pages of  
15 testimony in my direct testimony that addressed that,  
16 and it includes a letter from TxDOT.

17 COMM. NELSON: I agree. I think we need  
18 to revisit this issue because if there's right-of-way  
19 that's available in areas, then I think we need to try  
20 to do something with that.

21 COMM. ANDERSON: Well, it reduces the  
22 amount of land you have to take from private landowners.

23 COMM. NELSON: Right.

24 COMM. ANDERSON: And I just -- well, I  
25 have both driven 130 as well as flown over it numerous

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1 times, and you see the power lines that are paralleling  
2 it but -- in fact, they may be LCRA lines --

3 MR. RODRIGUEZ: Yes.

4 COMM. ANDERSON: -- I guess you have your  
5 own right-of-way that abuts the TxDOT right-of-way --

6 COMM. NELSON: I remember on 130 they  
7 would not let --

8 COMM. ANDERSON: Well, that's what spurred  
9 me to begin conversations with some of the TxDOT  
10 Commissioners.

11 MR. SYMANK: And I believe there have been  
12 conversations internally at TxDOT even to address the  
13 concepts of acquiring enough right-of-way when they  
14 preplan a conceptual freeway.

15 COMM. NELSON: Yeah, we've been talking  
16 about that for years.

17 COMM. ANDERSON: Well, that was part of  
18 the notion behind the Trans Texas Corridor --

19 CHAIRMAN SMITHERMAN: Man, don't go there.

20 (Laughter)

21 COMM. ANDERSON: But there would be  
22 sufficient right-of-way to --

23 MR. SYMANK: I didn't use the name.

24 COMM. ANDERSON: -- you know, things like  
25 transmission lines.

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1 MR. SYMANK: Right.

2 COMM. ANDERSON: That was one of the  
3 points was to minimize -- was to take land -- you could  
4 consolidate the pain into one area.

5 CHAIRMAN SMITHERMAN: Well, at this point,  
6 you know, we don't have -- we obviously don't have time  
7 to come to closure on this issue --

8 MR. SYMANK: Right.

9 CHAIRMAN SMITHERMAN: But I think I'd be  
10 open to something in the order if we choose segments  
11 that go along I-10 directing LCRA to engage at the  
12 highest levels, whatever the appropriate language is,  
13 for the use of, you know, co-sharing, whatever the  
14 arrangement, whatever the ownership arrangement is. It  
15 would be great if they just give it to us, but  
16 right-of-way where it appears to be abundant and would  
17 not likely be used in the near future --

18 MR. SYMANK: -- in the future --

19 COMM. NELSON: -- wait for the state to  
20 get money -- start -- settle the budget deficit.

21 (Laughter)

22 MR. RODRIGUEZ: I think we would welcome  
23 that. I think the bind we're in is we did do due -- I'm  
24 punchy, too. We engaged in due diligence. We met with  
25 them a number of times. And under the utility

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1 accommodation rules what Mr. Symank is saying exactly  
2 what our understanding is, it's exactly the  
3 understanding we had from them when we dealt with them  
4 on Clear Springs to Hutto. And if you just want to put  
5 some bones on this, in Mr. Symank's direct testimony,  
6 his Exhibit CDS-10 is a copy of the letter sort of  
7 cementing in place our understanding with Mr. Garza from  
8 TxDOT of their interpretation of the utility  
9 accommodation rules.

10 COMM. ANDERSON: I'm sorry, what is it  
11 again?

12 MR. RODRIGUEZ: CDS-10 in Mr. Symank's  
13 direct testimony.

14 CHAIRMAN SMITHERMAN: Well, I hear they're  
15 going through sunset, so this might provide an  
16 opportunity for some suggestions.

17 All right. Unless there are more  
18 questions of LCRA, is there anyone else who feels  
19 compelled to put something on the record they haven't  
20 heard before?

21 MR. WHICHARD: I've got a question -- is  
22 it inappropriate to ask about the math?

23 CHAIRMAN SMITHERMAN: Well --

24 MR. WHICHARD: I just -- because you had  
25 made a point in your letter, Mr. Chairman, about the net

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1 cost of burying the line, and it sounded like the number  
2 you had reconciled to was the gross cost of burying the  
3 line for approximately 2500 feet south of the airport  
4 being close to \$57 million. Is that right?

5 MR. SYMANK: 54 million.

6 MR. WHICHARD: But there is an incremental  
7 cost of looping -- just looking at it linearly it's  
8 going to be close to 11 million --

9 CHAIRMAN SMITHERMAN: Sir, I'm going to  
10 have to stop you here. I mean, this is not really an  
11 opportunity for you to cross examine LCRA. I mean, I  
12 appreciate your interest. You can either believe their  
13 numbers or not, and that will be up to us to decide  
14 whether we think they've calculated --

15 MR. WHICHARD: -- gross or net --

16 CHAIRMAN SMITHERMAN: I'm sorry. I  
17 appreciate your interest, but I think we're -- we're at  
18 a point -- yes, ma'am? Ma'am, you're going to have to  
19 come down and tell us who you are and speak loudly into  
20 a microphone.

21 MS. SUTHERLAND: I live on the gas  
22 pipeline --

23 CHAIRMAN SMITHERMAN: Your name, please?

24 MS. SUTHERLAND: Victoria Sutherland, one  
25 ranch down from Tierra Linda. There's --

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1 CHAIRMAN SMITHERMAN: Okay.

2 MS. SUTHERLAND: -- I'm going east.

3 CHAIRMAN SMITHERMAN: East?

4 MS. SUTHERLAND: Yeah. And I missed a lot  
5 and haven't had an opportunity to read a lot of the  
6 technical testimony. I think I had to pay for the  
7 transcript and stuff like that.

8 When you put these big towers over gas --  
9 live gas transmission, does that bother y'all, fire  
10 wise, explosion wise? Does it bother you?

11 CHAIRMAN SMITHERMAN: Well, I don't think  
12 that's really the right question.

13 MS. SUTHERLAND: Scare you or --

14 CHAIRMAN SMITHERMAN: Ferdie, what is your  
15 policy with regard to following pipeline easements?

16 MS. SUTHERLAND: I mean, should I be  
17 concerned about it?

18 CHAIRMAN SMITHERMAN: What's your  
19 practice?

20 MR. RODRIGUEZ: It's a practice. Yes,  
21 we've followed pipelines before. We do it all the time.  
22 Sometimes there's cathodic protection, but we work with  
23 pipelines all the time.

24 MS. SUTHERLAND: What kind of protection  
25 did you say?

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1 MR. RODRIGUEZ: Cathodic.

2 MS. SUTHERLAND: What does that mean?

3 MR. RODRIGUEZ: I'll let Curtis explain  
4 that to you.

5 (Laughter)

6 I tried to do it one time in a case.

7 MS. SUTHERLAND: Well, whatever it is,  
8 it's probably not on this old -- 30-year year-old gas  
9 transmission line, or is that something that you install  
10 on your equipment?

11 MR. SYMANK: Well, generally speaking, we  
12 would abutt but not share or overlap --

13 CHAIRMAN SMITHERMAN: And not over the top  
14 of it --

15 MR. MASON: -- to reduce the interaction  
16 between the two systems.

17 MS. SUTHERLAND: Okay.

18 MR. SYMANK: There are several things that  
19 we would do. We work with the pipeline to implement a  
20 protection scheme for the pipeline to reduce or  
21 eliminate any impact that might be induced into the  
22 pipeline from the transmission line. Similar things go  
23 on with railroads. When you parallel railroads, you  
24 create havoc for them if you're not careful so it's not  
25 unusual for us to do this.



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1 MS. SUTHERLAND: Okay. That's it.

2 CHAIRMAN SMITHERMAN: Let me see if I can  
3 ask for a little bit more input from the two of you. I  
4 jumped out with my memo today, and it seems to me --  
5 maybe I could be misreading both of you -- but it seems  
6 to me that perhaps there's some consensus as to what  
7 lines not to pick. And if there's not, tell me, but I  
8 would like to go away from here today by at least  
9 communicating to some of the parties that showed up here  
10 today that they don't need to come back next week. They  
11 may come back any way, but you know I expressed in my  
12 memo that I didn't think the P lines were appropriate.  
13 I didn't like the preferred line chosen by LCRA. And  
14 generally my preference is I-10 for a portion or all,  
15 and so I laid out my analysis of the study area in three  
16 parts, what I thought we should do on the west and the  
17 middle, and then really left the eastern part open for  
18 further conversation.

19 Are either of you willing to sort of take  
20 something off the table today?

21 COMM. ANDERSON: Yeah, I'll -- you're  
22 senior by --

23 CHAIRMAN SMITHERMAN: -- two weeks?

24 COMM. ANDERSON: -- by two days?

25 COMM. NELSON: I'm willing to take the P

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1 lines off the line. I'm not willing at this point to  
2 take the LCRA preferred route off the line, only because  
3 of the airport issue. I want to look into that record a  
4 little more, see what's there. It would be my  
5 preference not to go there and to do what you suggest,  
6 but it depends on what happens with the airport.  
7 Because I don't want anything we do to have any  
8 ramifications in terms of flight safety.

9 CHAIRMAN SMITHERMAN: Before you -- let me  
10 just tease this out a little bit more. The P lines, we  
11 know those are pretty clear. We know what those are.  
12 In the middle of the study area there are the three  
13 lines that sort of parallel each other that were really  
14 part of your initial study proposal --

15 COMM. NELSON: Right.

16 CHAIRMAN SMITHERMAN: -- one of which is,  
17 for the most part, the preferred line. Would you be  
18 inclined to choose one of those other than the preferred  
19 line or is it --

20 COMM. NELSON: No.

21 CHAIRMAN SMITHERMAN: Okay. Commissioner  
22 Anderson?

23 COMM. ANDERSON: And I sort of reached  
24 this conclusion before your memo, Mr. Chairman, but I  
25 came down after reading the PFD, the exceptions, the

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1 replies, some of the record that was particularly  
2 interesting -- of concern and I sort of came down on, I  
3 guess, one of three routes, more or less in the area  
4 that you talked about. I think the PFD has a great deal  
5 going for it. The judges' recommended route I think,  
6 particularly in the western -- western side, I'm -- I'm  
7 less wild about it on the east side, but it is a route  
8 that I think deserves attention.

9 I find that MK32 or 33 to be a route I  
10 could live with, although I -- I'll go back to the  
11 airport in a minute. The biggest problems with both  
12 obviously are costs, which is -- which is why I go back  
13 to MK15 at least in the western portion, and then MK62  
14 as the judges themselves noted --

15 CHAIRMAN SMITHERMAN: Right.

16 COMM. ANDERSON: -- is a very viable  
17 alternative. Now, with all of them, I have -- whichever  
18 route would be selected, there would be a number of  
19 tweaks --

20 CHAIRMAN SMITHERMAN: Right.

21 COMM. ANDERSON: -- to accommodate various  
22 landowners, and I think -- and also, frankly, there's  
23 some ideas that LCRA mentioned in their replies that I  
24 want to think about some more and think about -- one of  
25 the issues I've got to think about is directing them to

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1 do certain things versus relying on their discretion.  
2 There's -- there are issues there.

3 On balance, the interesting thing about  
4 MK16 or 15, they're about the same cost.

5 CHAIRMAN SMITHERMAN: Right.

6 COMM. ANDERSON: So it becomes a question  
7 of -- and this is where the art of routing comes in, not  
8 a science -- is that it's sort of what are the relative  
9 merits? Normally, as anybody who observes these  
10 proceedings, I put a great deal of emphasis on the  
11 habitable structure count. And while I understand the  
12 admonition that LCRA placed in their exceptions and in  
13 their replies about distinguishing between that, I think  
14 there are differences. How much weight in this  
15 particular case, I'm just going to have to reflect  
16 upon -- upon further. But that's -- that's where I am  
17 today.

18 Back to the airport, to wrap it up, in  
19 Junction, I have a -- that's a real dilemma because the  
20 judge -- or the judges who heard all the evidence at the  
21 end of the day were concerned about the southern route.  
22 I think they -- for one reason or another they dismissed  
23 all the alternatives on the south other than burying the  
24 line as not practical, that that was the only  
25 alternative -- the only safe alternative, and the cost

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1 of that is prohibitive.

2 COMM. NELSON: Crazy.

3 COMM. ANDERSON: Going north, the north  
4 loop around it, the judges accepted -- and the LCRA's  
5 view that it could be done and done safely, that is one  
6 area in which a number of the intervenors, particularly  
7 the Segrest group, vigorously and vociferously dispute  
8 and continue to dispute in their exceptions and in their  
9 replies. I'm going to dig back into the record on that.  
10 And I -- I've just got to think about that.

11 COMM. NELSON: I am where you are. I  
12 think on the eastern part -- eastern portion of the  
13 route -- I mean, I think we're caught in that. You  
14 know, this is a great illustration of the quandary  
15 between, you know, transmission -- I mean, a compatible  
16 right-of-way because you would think there's no better  
17 compatible right-of-way than a federal interstate and,  
18 you know, areas that have not really been cleared. So  
19 I'm struggling with that.

20 COMM. ANDERSON: And I know I've spent  
21 probably too much time on this with some of the folks  
22 who spoke today, but one thing I'm going to think -- an  
23 interstate versus a transmission line in terms of  
24 upsetting -- I just don't -- I have a hard time --

25 COMM. NELSON: Drawing a --

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1 COMM. ANDERSON: -- drawing a distinction.

2 COMM. NELSON: And I agree with you.

3 CHAIRMAN SMITHERMAN: Well, I think -- I  
4 see our friends from Parks and Wildlife and I should  
5 have asked you guys if you wanted to comment, but I  
6 think they probably agree with you on that.

7 COMM. ANDERSON: Well, they obviously --  
8 that's where they came out as --

9 CHAIRMAN SMITHERMAN: Did you guys want to  
10 say anything?

11 MR. GEORGE: -- going to answer questions,  
12 if you have any.

13 CHAIRMAN SMITHERMAN: I'm sorry I didn't  
14 recognize you earlier.

15 COMM. ANDERSON: And let me note for the  
16 record that the Parks and Wildlife actually intervened  
17 in this case and participated.

18 CHAIRMAN SMITHERMAN: Yes.

19 (Laughter)

20 COMM. ANDERSON: -- which I appreciate.

21 You know, I just have a hard time,  
22 particularly if you monopole per the judges'  
23 recommendation through Kerrville or other urban areas,  
24 more populated areas, and make other adjustments that  
25 these lines are particularly disruptive. I mean, if

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1 they go over big box store parking lots and -- it's  
2 just --

3 CHAIRMAN SMITHERMAN: I agree with you.

4 COMM. ANDERSON: -- I see them all the  
5 time. But I take the commentators at their word that it  
6 is deeply upsetting. Where I have seen them, I don't  
7 think it impairs commercial value. I just don't see  
8 that.

9 CHAIRMAN SMITHERMAN: Well, it doesn't  
10 seem to be hurting property values in Horseshoe Bay.

11 COMM. ANDERSON: It doesn't seem to be  
12 either.

13 CHAIRMAN SMITHERMAN: And as we commented,  
14 there's a -- what is that, a 138 line running out the  
15 backdoor of the Four Seasons here in town?

16 COMM. ANDERSON: Yeah. And I cross under  
17 a -- whatever it is. It's the City of Austin, but it is  
18 a transmission line, that's just -- well, it's the north  
19 end of my block.

20 COMM. NELSON: And a lot of those are not  
21 monopoles.

22 COMM. ANDERSON: The one I'm thinking of  
23 actually is a monopole, but --

24 COMM. NELSON: Okay. But there are lots  
25 of them in the cities that are big transmission lines

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1 that are not monopoles.

2 COMM. ANDERSON: So I'm not trying not to  
3 be too jaded about this because it's obvious that  
4 everybody has very serious and heart-filled --

5 CHAIRMAN SMITHERMAN: I'm trying not to be  
6 either, but I think I'm leaning more toward running down  
7 I-10 on the eastern edge of this. I'm going to think  
8 about it some more. I'm going to dive back into the  
9 record a little bit more. But, you know, this is not  
10 one of our criteria, but I think there's a common sense  
11 element to it that if you buy a piece of property along  
12 Interstate 10, you're running the risk of further  
13 development.

14 COMM. ANDERSON: Almost -- in fact, that's  
15 what Kerrville wants to facilitate.

16 COMM. NELSON: Right.

17 COMM. ANDERSON: If you're on an  
18 interstate, by definition that's what it leads to.

19 CHAIRMAN SMITHERMAN: Particularly given  
20 our policy of building feeder roads, access roads --

21 COMM. ANDERSON: Yeah, the frontage roads.

22 CHAIRMAN SMITHERMAN: Right.

23 COMM. ANDERSON: One thing that I want to  
24 explore again and I want to look at some of the more  
25 detailed maps is -- let me ask LCRA: How far south on



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1 each -- on either side of any of these routes did you  
2 notice, I understand you noticed more than you had to  
3 because there was some dispute in the exceptions and  
4 replies -- or some -- there was some criticism and  
5 concern raised, but --

6 MR. RODRIGUEZ: There was. And it would  
7 depend on which segment or route you're talking about.

8 COMM. ANDERSON: For example, around the  
9 Junction area.

10 MR. RODRIGUEZ: What we typically do --  
11 the rule says 500 feet on either side of the centerline  
12 and we go 550. We just build in a margin of error. In  
13 some places we noticed 700 feet wide, for example, where  
14 you're talking about jumping to the south side of I-10  
15 across from the Atkission car dealership -- and let me  
16 go back to that in a minute. But that's a 700-foot-wide  
17 corridor.

18 Over on the east side we noticed wide  
19 corridors where we had the Kendall to Gillespie issue  
20 and we were noticing wide enough for paralleling  
21 purposes. Further out west where we had difficulty  
22 tying down property owners with the tax records, we  
23 noticed by abstract. So if you have particular segments  
24 that you're interested in we could tell you, but it's at  
25 least 550 on either side.

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1                   And with respect to the -- jumping on the  
2 south side of I-10 in front of the car dealership, we  
3 put that in the exceptions if in fact that was something  
4 that Kerrville was interested in. It is not an optimum  
5 solution by any means. If you look at the exhibit I  
6 provided for, you'll see sort of like a little blue  
7 cloud, that line, that's the notice corridor. It  
8 doesn't allow us to jump over Highway 16. So basically  
9 we would be crossing I-35 (sic) obliquely to get to the  
10 other side and it would be on very tall poles to do that  
11 because we have to get over the interstate.

12                   COMM. NELSON: I-10?

13                   MR. RODRIGUEZ: Yes. What did I say?

14                   COMM. NELSON: I-35.

15                   MR. RODRIGUEZ: I-10. So that's not an  
16 optimum solution. But given what we saw from Kerrville  
17 that they seemed to be upset about us being on the north  
18 side, we said, well, there is a possibility to jump onto  
19 the south side. But that's not an optimum solution. I  
20 mean, the better solution is to stay on the north end --

21                   COMM. ANDERSON: But it does take a  
22 significant number of habitable structures out --

23                   MR. RODRIGUEZ: It does -- if I might  
24 address that just for a moment because we touched on it  
25 this morning and I thought we were going to get back to

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1 it later today. It's never an optimum solution to take  
2 a home. If it was on a slab foundation, it would be  
3 very difficult to move. If that was the situation, you  
4 might literally have to take the home and raise it. In  
5 this particular situation in that Kerrville mobile home  
6 park, they are mobile homes. And that's not to  
7 denigrate the fact that they're habitable structures  
8 because I don't think you have any distinction in your  
9 definition.

10 CHAIRMAN SMITHERMAN: No, we don't.

11 COMM. NELSON: No.

12 MR. RODRIGUEZ: And that's how we treated  
13 them. They are habitable structures. We went through  
14 there. We drove through there. People live in those  
15 homes.

16 But having said that, they are mobile  
17 homes. We could move them perhaps to the back side of  
18 the property or we could move them someplace else.  
19 Someone said this morning people would lose their homes.  
20 I don't think that's the case. We might move them, but  
21 they wouldn't lose the homes.

22 COMM. NELSON: That's the --

23 CHAIRMAN SMITHERMAN: I think that's the  
24 point you were making --

25 COMM. NELSON: -- what I said this

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1 morning. It's not that somebody in a mobile home is not  
2 entitled to the same protections. It is that you can  
3 move a mobile home.

4 MR. RODRIGUEZ: That's correct. And  
5 obviously if you live in that particular -- and you'll  
6 see on the exhibit that I provided for you. I think  
7 there's six of them right there right along the fence  
8 line right by the access road.

9 COMM. NELSON: Right.

10 MR. RODRIGUEZ: And they couldn't stay  
11 there. If the line goes there, we would have to move  
12 them. I think there's six if I remember --

13 COMM. NELSON: There's a total of eight in  
14 the two different areas right around I-10

15 MR. RODRIGUEZ: And I think that's  
16 correct. And I think one of the other two is a  
17 collision repair center.

18 COMM. NELSON: It doesn't look like a  
19 house because it doesn't have any windows or anything.

20 MR. RODRIGUEZ: It's a commercial  
21 establishment. But that's a factor. And like I say,  
22 it's never an optimum solution. We prefer not to do it.  
23 But one of the things we try to point out in the  
24 exceptions was this was very difficult. I mean, as  
25 you've heard today, this is -- you know, we've been

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1 dealing with this for a year-and-a-half. There are no  
2 easy solutions. If you go from McCamey D to Kendall  
3 you're going through the heart of the Hill Country. And  
4 we tried to give you as many options as we could with  
5 crossovers and z sections and overnoticing so you had  
6 that the opportunity to move a line if you thought you  
7 needed to.

8 But there are no easy solutions.  
9 Regardless of where you put this line, somebody is going  
10 to be unhappy. And the two solutions that I think  
11 you're focusing on right now, MK15 -- Staff's MK15 --  
12 and 62, they're not bad solutions at all.

13 COMM. NELSON: But noting that I still  
14 have major heartburn over the airport issue --

15 CHAIRMAN SMITHERMAN: On the airport  
16 issue, yeah --

17 COMM. NELSON: -- and if I were king of  
18 the forest I'd probably do it on the south portion and  
19 not bury them and just try to work out the issue  
20 concerns they all have.

21 MR. RODRIGUEZ: And we'll be glad to  
22 continue to look at that. I would say that we looked at  
23 solutions south of the river in Junction. The problem  
24 is you've got FAA issues. You've got river issues.  
25 You've got safety issues, and then you've got the city.

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1 CHAIRMAN SMITHERMAN: Most of the city is  
2 there.

3 MR. RODRIGUEZ: Yeah. I mean, if you get  
4 south -- you move further south and you flatten the  
5 line, you may have notice issues. But you get down  
6 there by the park and the baseball field and -- I mean,  
7 ultimately it's the Commission's call, but usually it's  
8 our intent to try and stay away from cities if we can.  
9 You come down very close to where the block alignment of  
10 the city begins to shows up. And, you know, if it's  
11 possible to move down there, we'll look at it and we'll  
12 be glad to work with the CVA folks. But it doesn't come  
13 without issues.

14 COMM. NELSON: I understand.

15 CHAIRMAN SMITHERMAN: Do you guys have any  
16 more discussion?

17 MR. ROSS: Commissioners, Joel Will Ross  
18 on behalf of my family, three entities, and I just want  
19 to touch with you on the notice issue and the overnotice  
20 issue. Clear View Alliance addressed it.

21 My family we have three -- we were unique  
22 in this whole docket in that three of my family  
23 entities, two of which are in Sonora, one in Junction,  
24 were victims of the overnotice deal -- and I don't know  
25 if y'all are aware of all the docket -- the motions to

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1 dismiss and all that flying around. I won't revisit  
2 that, but all of our properties, both in Sonora and in  
3 Junction -- we own two of the motels south of I-10 there  
4 at the intersection of 83 and I-10, not a single  
5 property was crossed by any of LCRA's routes that have  
6 been proposed in the EA. We were around, yet we were  
7 noticed.

8 But in Sonora the closest route to us, Y2C  
9 is three-quarters of a mile away. We have property  
10 that's over a mile away. And the reason I want to bring  
11 this up is -- Chairman Smitherman, you brought this up a  
12 little earlier -- if somebody has been notified but yet  
13 they don't have a route across them, you're not going to  
14 go there. I applaud you for saying that, because we  
15 were faced with the catch 22, "Well, do we intervene and  
16 subject ourself to your jurisdiction that we could get  
17 the route or just lie behind the log and not do anything  
18 and still run the risk of having it because we didn't --

19 COMM. ANDERSON: Well, yeah. I mean, the  
20 reason -- the reason notice doesn't particularly bother  
21 me is because of -- we haven't -- we've encouraged the  
22 TSPs to give us maximum -- maximum flexibility. And you  
23 were right to intervene because anybody -- and this is  
24 an issue with respect to one of the landowner  
25 modifications that I'm going to have to think about. I

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1 think the bottom line is legally, if you're noticed,  
2 that means that the route can go on your property. You  
3 know, whether you participate or not, intervening does  
4 nothing to -- it has nothing to do with submitting to  
5 the jurisdiction. If you're noticed, the line can go.

6 MR. ROSS: And I guess where I'm going  
7 with that is the way we were so unique -- uniquely  
8 affected here is that you get out in the country, any of  
9 the other links, where it went across the fence line of  
10 one ranch, the neighbor looking across the fence did not  
11 get notice, well, they're out. They don't have to  
12 intervene. We were forced to intervene even though we  
13 were in the same position. We do not have a line --

14 COMM. NELSON: We have another case  
15 recently where we had people almost crying because they  
16 were like half a mile away from the line and they wanted  
17 notice. I mean, seriously, this is an area where we  
18 cannot keep people happy.

19 MR. ROSS: And I'm just bringing this up  
20 for your information because you asked and you mentioned  
21 that it's in some of the briefing. It put us in a --  
22 what the hell do we do?

23 COMM. ANDERSON: Well, you made the  
24 right --

25 MR. ROSS: And so we --



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1 MR. RODRIGUEZ: Could I say something?

2 MR. ROSS: Yeah.

3 MR. RODRIGUEZ: Joe Will and I have been  
4 talking about this for months, and I understand exactly  
5 what he's saying. We had that situation come up in  
6 Clear Springs to Hutto where we had folks who were  
7 noticed. They did not intervene. And Cooper Land  
8 Development suggested an alternative which bumped it off  
9 their property across the road onto flowed landowners  
10 who did not intervene and that adjustment was adopted by  
11 the Commission. We sort of get whipsawed --

12 COMM. NELSON: I wasn't part of that  
13 decision by the way.

14 (Laughter)

15 COMM. ANDERSON: There's one-- there's at  
16 least one modification as apparently Staff is  
17 recommending where it would move off one property owner  
18 onto another property owner who did not intervene -- or  
19 property owners that were noticed.

20 MR. RODRIGUEZ: Well, and I think we took  
21 our cue, rightly or wrongly, from Gillespie-Newton where  
22 I think y'all had wanted to move the line to property --  
23 to the property -- to the property boundaries and it was  
24 kind of a long move, but we had not noticed somebody on  
25 the other side and we were trying to obviate that and

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1 give you-all as much --

2 COMM. ANDERSON: And I have absolutely no  
3 criticism.

4 CHAIRMAN SMITHERMAN: I think we've -- I  
5 think we've come to the end of this discussion. So we  
6 will take this item up again in our next Open Meeting.  
7 Thank you-all for coming.

8 This meeting of the Public Utility  
9 Commission is adjourned.

10 (Proceedings adjourned at 5:22 p.m.)

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## OPEN MEETING - ITEM 11 1/13/2011

## C E R T I F I C A T E

STATE OF TEXAS )

COUNTY OF TRAVIS )

We, Lou Ray and William C. Beardmore,  
Certified Shorthand Reporters in and for the State of  
Texas, do hereby certify that the above-mentioned matter  
occurred as hereinbefore set out.

WE FURTHER CERTIFY THAT the proceedings of  
such were reported by us or under our supervision, later  
reduced to typewritten form under our supervision and  
control and that the foregoing pages are a full, true,  
and correct transcription of the original notes.

IN WITNESS WHEREOF, we have hereunto set  
our hand and seal this 13th day of January 2011.



Digitally signed by William C.  
Beardmore  
Date: 2011.04.29 14:38:09 -07:00  
Reason: Transcript prepared by  
W.C.B.  
Location: Austin, TX

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## OPEN MEETING - ITEM 11 1/13/2011

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LOU RAY

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January 19, 2011

Chairman Barry T. Smitherman  
Commissioner Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

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PUBLIC UTILITY COMMISSION OF TEXAS  
CENTRAL RECORDS DIVISION

BY: Ginette Hazard  
DATE: April 29, 2011



Re: SOAH Docket No. 473-10-5546; PUC Docket No. 38354, *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for the McCamey D to Kendall to Gillespie 345-kV CREZ Transmission Line in Schleicher, Sutton, Menard, Kimble, Mason, Gillespie, Kerr, and Kendall Counties*

Dear Commissioners:

Based on questions raised at last week's Open Meeting LCRA TSC representatives went back out to the field this past weekend to inspect the area around Junction south of I-10 and south of the Kimble County Airport to investigate whether an acceptable and safe alternative could be found to accommodate the issues raised by Clear View Alliance (CVA) at the Open Meeting. While there, LCRA TSC's engineers also reconnoitered the area north of the airport to see if a better solution could be found to address the concerns raised by the Segrest parties and Commissioner Nelson. On Monday, LCRA TSC real estate representatives diligently researched the Kimble County tax records to make sure that any possible routing alternatives presented here did not raise notice issues. This letter contains LCRA TSC's findings as well as additional information and comments that might be useful to the Commission as it reconvenes this Thursday, January 20<sup>th</sup> to continue deliberating on this case.

As a threshold matter, LCRA TSC is aware that Comm. PROC. R. 22.71(j) generally prohibits the filing of material, such as this letter, addressed to the Commissioners within seven (7) days of an open meeting. LCRA TSC respectfully suggests that the issues to which we are responding in this letter were raised in questions by the Commissioners and CVA, and as such, come within the exception provided in subsection (j)(2)(A). Similarly, LCRA TSC is providing the information in this letter to respond to issues raised by CVA and the Segrest parties. As such we believe this letter addresses matters under negotiation among the parties and thereby comes within the exception provided in subsection (j)(2)(B). Finally, because of the urgency and timeliness of the issues addressed in this letter, and because the information necessary to discuss the issues was gathered this past weekend, we respectfully request the Commission to find that good cause exists to file this letter one day before the Open Meeting at which this docket will be taken up.

### **Kimble County Airport – Southern Route**

At the Open Meeting of January 13<sup>th</sup> CVA suggested a routing alternative that would pass south of the Kimble County Airport and south of the North Llano River. CVA's proposed configuration, as understood by LCRA TSC is attached as **Exhibit A**. LCRA TSC expressed serious misgivings about CVA's proposal on two grounds. First, in the opinion of LCRA TSC's transmission engineers the structure located approximately 2,400 feet directly south of the airport runway is not safe because if it is constructed tall enough (i.e., 120 feet) to allow for the necessary spans across the river it will pierce the obstacle clearance slope of 90 feet currently defined by a line of trees south of the airport. LCRA TSC does not believe it is appropriate to construct structures that would make the transmission line the new obstacle in place of the existing tree line particularly when there are other routing options available.

However, on Saturday, January 15<sup>th</sup> LCRA TSC's engineers studied and photographed the area in question and designed a routing alternative that would address CVA's concerns and would allow safe construction of the transmission line in the same area south of the Kimble County Airport. LCRA TSC's proposed routing alternative is shown in **Exhibit B**. As shown in Exhibit B, the route would traverse the affected area a little further south of CVA's proposal with the tower location immediately south of the airport being approximately 3,000 feet from the airport runway rather than 2,400 feet as proposed by CVA. However, by crossing the North Llano River further west, and then re-crossing the river again further east LCRA TSC's proposed routing alternative allows a shorter crossing of the river (thereby allowing the use of a shorter span) and a more gentle approach towards the area immediately south of the airport runway.

This configuration also allows the line to be lowered and flattened on specialty structures so that by the time it crosses the flight path immediately south of the runway the transmission line will be below both the Federal Aviation Administration (FAA) Part 77 surfaces as well as the obstacle clearance slope. In other words, in LCRA TSC's opinion this new proposed configuration can be constructed safely and efficiently. In terms of cost, currently MK63<sup>1</sup>, as filed (including approximately \$54 million for undergrounding south of the airport), is estimated to cost \$360.5 million. By constructing the alternative discussed here the need for underground construction is eliminated and the estimated cost for MK63 drops by \$49 million to approximately \$311 million.

To be clear, flattening the line and allowing it to pass safely under the prescribed slopes will require a broader right-of-way (ROW) of approximately 200 feet wide. However, that is not unusual given the factors at play here. Furthermore, despite the fact that this proposed adjustment enters the City of Junction (albeit in a relatively less built-up area) there appears to be ample room to construct this alternative in the area despite the fact much of the area in question is located in a flood plain, which presents its own set of engineering challenges. Nonetheless, LCRA TSC believes that these circumstances can be accommodated as a result of its further study this past weekend.

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<sup>1</sup> For comparison purposes LCRA TSC inserted its modification into "MK63", which is a route that passes through the willing landowner AC Ranches on the western side of the study area and follows I-10 through Kerrville on the eastern side. However, this modification could work for other routes, such as MK33 or "MK15 Segrest" as well.

LCRA TSC's second area of concern related to notice; specifically, whether CVA's proposed routing alternative would raise notice issues. LCRA TSC determined that, indeed, CVA's proposed routing alternative did not resolve all potential notice issues. Nevertheless, by performing additional landowner research on Monday January 17<sup>th</sup>,<sup>2</sup> LCRA TSC has confirmed that its proposed routing alternative can be constructed entirely on noticed landowners, thereby obviating any potential notice issues. LCRA TSC has also considered this new potential routing configuration and compared its effect on certain important routing metrics as compared to original alignment of MK63. Those results are contained in **Exhibit C**, attached hereto.

LCRA TSC would note that it did not propose such an alternative in its original application. LCRA TSC's mandate, following the September 2009 Joint Motion to Delay, was to add additional routes following the US 277/I-10 and AEP/LCRA TSC 138-kV line corridors. In designing these routes, LCRA TSC occasionally left these designated corridors briefly to avoid entirely the cities of Eldorado, Sonora, Menard, and Mason, and also created alternative routes around both the cities of Junction and Kerrville. LCRA TSC did not propose an alternative such as the one described here because of certain impacts. That is, it deviates from the I-10 corridor to cross the North Llano River twice, increasing the clearing of riparian vegetation. It puts a 200-foot ROW through a portion of the City of Junction (albeit in a relatively less built-up area). It has the potential, depending on final alignment, to impact two businesses which LCRA TSC has identified as a gravel-mining operation and a set of barns for raising chickens. Finally, it puts a stretch of the line into the floodplain. Given these factors, LCRA TSC believed at the time that a reroute avoiding the City of Junction and passing two miles away from the airport to the north was a reasonable solution. Nonetheless, after reviewing the issues outlined above LCRA TSC believes that if the Commission decides to approve the southern bypass of the Kimble County Airport as described herein it can do so confidently. LCRA TSC would note none of these factors listed here is a fatal flaw to building a line south of the North Llano River, and LCRA TSC believes this line is reasonable and constructible, and would only impact noticed landowners.

In short, if the Commission would prefer that the line traverse the area south of the Kimble County Airport then LCRA TSC's proposed routing alternative can accomplish this goal efficiently and safely, while reducing the cost of route MK63 (or any route that uses the segments south of the airport) by \$49 million. LCRA TSC would note that this routing alternative is located as far south of the river as necessary to remain below the two applicable FAA flight surfaces, but as far north as possible to stay away as best we could from the residents of the City of Junction. If the Commission chooses to approve this routing alternative, LCRA TSC would request as much flexibility as possible to possibly adjust and straighten the proposed routing adjustment post-order, thereby saving additional costs.

#### **Kimble County Airport – Northern Route**

A second area of concern was raised predominantly by the Segrest intervenors with respect to the "b19 reroutes" to the north of the Kimble County Airport. The administrative law judges (ALJs)

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<sup>2</sup> As an aside LCRA TSC would note that Monday, January 17<sup>th</sup> was a holiday. However, the Kimble County offices were open and LCRA TSC representatives were in Junction all day performing their landowner research.

recommended this reroute as a way to avoid having to traverse through the City of Junction, and as a way to avoid having to incur the approximately \$54 million to build the transmission line underground immediately south of the airport and along I-10. LCRA TSC believes its current proposed routing alternative north of the Kimble County Airport, adopted by the ALJs in the PFD, is perfectly acceptable. Despite the concerns raised by certain of the parties, the b19 reroutes are safe and can be built as recommended in the PFD.

Nevertheless, to address concerns raised by the Segrest parties and Commissioner Nelson at the Open Meeting of January 13<sup>th</sup>, LCRA TSC's engineers reviewed and inspected the area again over the January 15<sup>th</sup> weekend and can propose the following routing adjustments to address these concerns. One minor adjustment to the existing segment would simply move the segment slightly to the north in order to make use of a dip in terrain depicted on the USGS topographic maps, at a cost of less than \$1 million. The field visit confirmed the existence of this topographic drop on Highway 83, which connects lower topography on both the east and west sides of the highway. The visit also confirmed the existence of an unmarked unlighted distribution line to the south of the segment as currently proposed. The distribution line was not previously mentioned but is directly in the path of departure, which is the subject of the concerns expressed by some at the Open Meeting of January 13<sup>th</sup>.

Another potential proposed reroute would more closely follow the northern and eastern property lines of the Whichard property (Parcel ID b19b-001) and the northern property line of the Shelby Springs Ranches LLC (Parcel ID b19c-001).<sup>3</sup> By pinning the transmission line on the northern and eastern property lines as described in the two above-mentioned adjustments (one of which was proposed by Mr. Whichard as part of a landowner-requested "Attachment 13" routing adjustment), and by lowering the height of the transmission structures, LCRA TSC can put additional distance between the northern end of the runway and the location of the transmission line. This more involved reroute could add as much as \$10 million to the estimated cost of routes MK15 Staff Modified and MK62.

Again, the current routing alternative, which is located almost two miles from the end of the runway and which is recommended in the PFD, is safe and acceptable; the proposed routing alternatives suggested herein are even more so. LCRA TSC can use the same flattened structures and the same 200-foot ROW proposed for the southern crossing of the Kimble County Airport, described above, to lower the line in relation to the northern end of the runway.

Regardless of whether the Commission chooses to pass by the Kimble County Airport to the north or to the south, LCRA TSC believes it has given the Commission two good routing alternatives from which to choose, in addition to the numerous other routing alternatives that do not cross near to the Kimble County Airport or the City of Junction at all (e.g. LCRA TSC's Preferred Route, MK13).

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<sup>3</sup> Mr. Whichard is an intervenor in this case. Shelby Springs Ranch was noticed but did not intervene.



**City of Kerrville and Kerr County Issues.**

During the Open Meeting of January 13<sup>th</sup> Commissioner Anderson asked representatives for Kerrville and Kerr County their opinion of a routing proposal suggested by LCRA TSC in its Reply to Exceptions. That suggested alternative would apply if MK62 or MK63 were adopted and would have the transmission line cross I-10 from the north side to the south side to avoid the mobile home park, then cross back to the north side of I-10 in the immediate vicinity of the Atkission car dealership. It should be understood that in LCRA TSC's discussions with counsel for Kerrville, Kerr County, KPUB, and Atkission (the "Kerrville Group"), they remain opposed to any route which uses I-10 through the City of Kerrville. That being said, LCRA TSC and counsel for Kerrville and Kerr County have discussed this possible alternative and agree that the southern alternative discussed during the Open Meeting is not a realistic alternative if the line is not to be buried through Kerrville, and would request that the Commission drop the alternative from further consideration. Should the Commission choose a route that traverses through Kerrville along I-10 and that will not be buried, the northern path along the north frontage of I-10 would be preferable. Having said this, it should not be understood in any way or fashion that any of the Kerrville Group concedes that the route should traverse through Kerrville along I-10 at all. On the contrary, the only issue here is whether or not an aerial southern crossing along I-10 through Kerrville should be an alternative open for consideration. After discussing the matter with counsel for the Kerrville Group, LCRA TSC would respectfully suggest that it is not.

**Routing Modifications along Staff MK15, MK62, and MK63.**

LCRA TSC has compiled a list of landowner-proposed routing modifications from its Attachment 13, Supplemental Attachment 13, and post-hearing route modifications submitted by CVA. These documents (other than the post-hearing adjustments from CVA) were admitted into the record as landowner-proposed routing modifications that the Commission could entertain and adopt should it choose a route that crosses these individuals' respective properties. LCRA TSC has compiled those modifications as **Exhibit D** for the Commission's convenience, and would respectfully request that if the Commission chooses any of these alternatives that the Order be written to clearly reflect such direction.

In addition, LCRA TSC has provided an estimated cost for each of the landowner-proposed routing modifications attached hereto (except for a modification on the McGowan property that was discussed only at the January 13<sup>th</sup> Open Meeting). LCRA TSC is concerned that there may be additional landowner-requested modifications that come to light after the Order in this case is entered. To the extent any of the attached landowner modifications are adopted in the Order in this case, LCRA TSC would welcome the Commission's direction regarding a proper dollar threshold the Commission would consider reasonable with respect to landowner-requested routing modifications that are *not* reflected in the landowner-proposed routing modification materials, and that may be proposed by landowners once LCRA TSC personnel go out into the field to begin surveying work for the transmission line.

**Proposed Ordering Paragraphs Raised by Commissioner Nelson.**

In her memo of January 12<sup>th</sup> Commissioner Nelson suggested several ordering paragraphs. LCRA TSC would respectfully request a reconsideration of three of those paragraphs, as described below.

First, Commissioner Nelson suggested ordering paragraphs 6 and 7 pertaining to LCRA TSC's dealings with the United States Fish and Wildlife Service (USFWS). LCRA TSC has been working with USFWS for almost 18 months to secure an Endangered Species Act §10(a) permit as part of a comprehensive Habitat Conservation Plan (HCP). While LCRA TSC understands the basis for Commissioner Nelson's ordering paragraphs, LCRA TSC is concerned that Ordering Paragraphs 6 and 7 may be redundant, if not conflicting, when considered in light of the ongoing §10(a) permitting process. Requiring LCRA TSC to engage in mitigation measures that could conflict with directives established through the §10(a) permit/HCP could cause unnecessary conflicts between federal permits and state orders. LCRA TSC respectfully suggests that ordering paragraphs 6 and 7 are not necessary because they cover precisely the subject matter of LCRA TSC's requested Section 10(a) permit and HCP, both of which are currently under discussion with the USFWS, the agency with subject matter jurisdiction over federally listed endangered or protected species issues.

Second, ordering paragraph 11 is also potentially problematical in that it requires LCRA TSC to return each affected landowner's property to its original contours unless agreed to by the landowners or their representatives. On its face the ordering paragraph appears benign. However, LCRA TSC must construct in areas of topography in and near natural features such that there are occasions when it is necessary to adjust the contours to ensure the safety and stability of the towers or poles. Requiring LCRA TSC to return the property to its original contours could jeopardize the safety of the line in those instances where the contours have been altered to permit stabilization of the structures. LCRA TSC would request that the ordering paragraph language contained in the PFD be retained, and would welcome a discussion of this point at the Open Meeting on Thursday.

The request to utilize the particular restoration language requested by LCRA TSC here stems from experience with construction over the last decade. This experience includes, in part, the 345-kV rebuild of a portion of the Kendall-Cagnon 345-kV transmission line certificated by the Commission in September, 2005 (in Docket No. 29065) and located in the area between Comfort and San Antonio that has topographical features similar to those LCRA TSC will find in many areas through which this transmission line will traverse. As a result of this experience LCRA TSC requested and received in the Order certificating its proposed Clear Springs to Hutto 345-kV project (PUC Docket No. 33978) the type of flexibility language proposed by it in this proceeding. The language may be found in FOF 210 and Ordering Paragraph No. 3 in the Commission's Order dated October 10, 2008 in Docket No. 33978 and is further explained in the SOAH PFD (June 30, 2008) at page 81.

Letter to PUC Commissioners

January 19, 2011

Page 7

LCRA TSC appreciates the care and attention the Commission gave to this case at the Open Meeting on January 13<sup>th</sup> and trusts the issues addressed in this letter will be useful to the Commission as it continues its deliberations on Thursday January 20<sup>th</sup>.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Fernando Rodriguez", with a stylized flourish at the end.

Fernando Rodriguez

Associate General Counsel

cc: Margaret Pemberton  
Scottie Aplin  
All parties (via PUC Interchange)



# McCamey D to Kendall Segment Y11 - CVA Route Mod

- Segment as Proposed
- CVA Modification
- KCA Approach Surfaces
- Segment Y11 Underground
- Approx Str Location
- Mod 6-Pole Dead-end
- Mod Twin H-frame

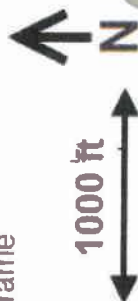


EXHIBIT A

N. Llano River Crossing 2  
Floodplain Elev = 1701 ft  
Req'd Span = 1300 ft

Critical Structure Location  
Ground Elev = 1681 ft (20 ft below FP)  
Max Str. Ht under Obs. Slope = 90 ft  
Min Str. Ht to be over Floodplain = 120 ft  
**NOT FEASIBLE**

KCA South Runway  
Elev = 1701 ft  
Obstacle Slope = 34:1

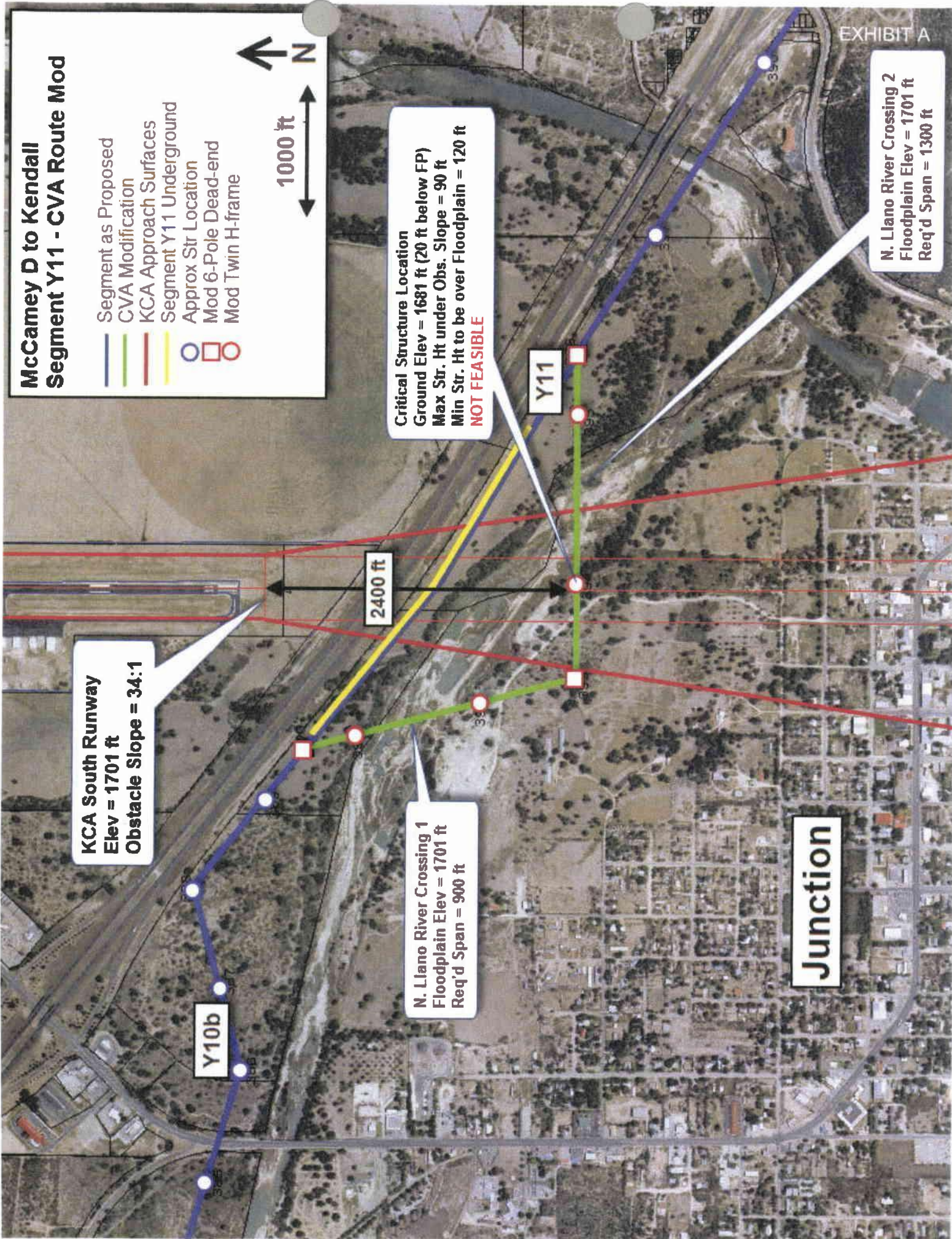
N. Llano River Crossing 1  
Floodplain Elev = 1701 ft  
Req'd Span = 900 ft

Junction

Y11

Y10b

2400 ft





# McCamey D to Kendall Segment Y11 - South Route Mod

Route as  
Proposed  
Route Mod  
Approach  
Surfaces  
69 kV TL's  
Y11 UG

6-pole DE  
Twin H-frame  
DC Vert Str



**SEGMENT Y11 SOUTH ROUTE MODIFICATION: PROPOSED ROUTE MODIFICATION ON SEGMENTS Y10b  
AND Y11**

The Segment Y11 South Route Modification starts on Segment Y10b west of US 83 in Junction, then goes in a southeasterly direction for approximately 1700 feet on the north side of the North Llano River. It then turns south and crosses the North Llano River on a southerly alignment that parallels an existing 69 kV transmission line for approximately 1450 feet, before turning again to the southeast to parallel the River on the south bank. At this point, the line transitions from double-circuit vertical structures to low profile 6-pole dead-ends and twin tangent H-frames. The line then continues in a southeasterly direction for approximately 3150 feet with low profile construction, and then turns to the northeast to cross to the north bank of the North Llano River, continuing for approximately 1350 feet until it intersects again with Segment Y11. The route modification includes monopole construction for some structures that are located in the floodplain, and additional estimated costs for erosion mitigation measures.

**For routes containing segments Y10b and Y11**

LCRA TSC Engineering representatives have reviewed the proposed modification and determined that it is technically feasible. The proposed modification would:

- remove two (2) tangent structures and three (3) deadend structures.
- remove a 2500-foot section of underground construction
- add three (3) steel tangent poles and one (1) steel twin dead-end pole structure.
- add three (3) twin tangent H-frame structures,
- add two (2) 6-pole dead-end structures,
- add approximately 0.2 miles to the length of the project,
- widen the right-of-way by 60' (from 140' to 200') for approximately 0.9 miles , and
- reduce the estimated project cost of any route including Segments Y10b and Y11 by approximately \$49M.

**ENVIRONMENTAL DATA FOR ALTERNATIVE ROUTE EVALUATION**  
**MCCAMEY D - KENDALL-GILLESPIE 345-KV PROJECT**  
**Y11**

LAND USE	Original Alignment	Proposed Alignment
1 Length of alternative link		
2 Number of habitable structures <sup>1</sup> within 500 ft of ROW centerline	6,630	7,660
3 Length of ROW parallel to existing transmission line ROW	0	0
4 Length of ROW parallel to other existing compatible ROW (highways, roads, pipelines, etc.)	0	1,454
5 Number of parks/recreational areas within 1,000 ft of ROW centerline	5,172	0
6 Number of parks/recreational areas within 1,000 ft of ROW centerline	0	1
<b>ECOLOG</b>		
6 Length of ROW across bottomland/riparian woodland		
7 Number of river crossings	2,980	4,013
8 Length of ROW parallel (within 100 ft) to streams or rivers	0	2
9 Length of ROW across 100-year floodplains	0	0
<b>CULTURAL RESOURCES</b>	6,630	7,660
10 Number of recorded historic and prehistoric sites crossed		
11 Number of additional recorded historic and prehistoric sites within 1,000 ft of ROW centerline	0	0
12 Number of National Register-listed or determined-eligible sites crossed	0	0
13 Number of additional National Register-listed or determined-eligible sites within 1,000 ft of ROW centerline	0	0

Note: All length measurements in feet.

<sup>1</sup> Single-family and multifamily dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.



# Potential Modifications for McCamey D-Kendall Routes

EXHIBIT D  
Page 1 of 3

## Route MK15 PUC Staff Modified

Length: 144.62 miles

Cost: \$304.2 million

### Segments:

b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y8-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-b48-b53-b56a-b58b-c6-c10-c11-c13a-c13e-c13b-c13c-c13d-c19-c20-c21

Landowner	Segment(s)	Modified Length (miles)	Modified Cost (millions)	Source	PUC COMMISSIONERS
Runge3	b14a/b5b	0.33	\$1.2M	Attachment 13 Supplement (p. 73)	Supported 01/13/2011
Mudge	Y7b	0.11	\$1.6	Attachment 13 Supplement (p. 65)	Supported 01/13/2011
Moore-Smith	Y8	1.36	\$3.1M	Attachment 13 (p. 7)	
Moore-Smith 2	Y8	-0.57	-\$0.9M	Attachment 13 Supplement (p. 62)	
Moore-Smith 3	Y8	-0.35	-\$0.0	Attachment 13 Supplement (p. 63)	
Whichard	b19b	0.5	\$1.5M	Attachment 13 Supplement (p. 91)	<i>Requires further modification for use with this route</i>
Andersen – per PUC	c6-Latt to Poles	0	\$0.6M	Attachment 13 Supplement (p. 6)	
Henke-Yant-Andersen	c6	0.49	\$1.3M	Attachment 13 Supplement (p. 43)	Did not support
Henke-Yant2 –per PUC	c6	0.36	\$1.7M	Attachment 13 Supplement (p. 44)	<i>Counsel for Yant stated that it had been withdrawn from the record</i>
Dreiss	c13b	0.11	\$7.3M	Attachment 13 Supplement (p24)	
Schooley	b84	0.24	\$1.2M	Post Hearing Route Modification	Supported 01/13/2011
McGowan	b14c	?	?	Discussion at Open Meeting	Supported 01/13/2011 – follow pipeline crossing ranch
Savage	b90	-	-	Attachment 13 Supplement (p. 76)	Withdrawn



# Potential Modifications for McCamey D-Kendall Routes

EXHIBIT D  
Page 2 of 3

## Route MK62 (Modified MK15 PUC Staff Modified)

Length: 141.79 miles

Cost: \$302.2 million

### Segments:

b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y8-b19b-b19c-b23a-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-Y22-Y22a-c18ab-c18b-c21

Landowner	Segment(s)	Modified Length (miles)	Modified Cost (millions)	Source	PUC COMMISSIONERS
Runge3	b14a/b5b	0.33	\$1.2M	Attachment 13 Supplement (p. 73)	Supported 01/13/2011
Mudge	Y7b	0.11	\$1.6	Attachment 13 Supplement (p. 65)	Supported 01/13/2011
Moore-Smith	Y8	1.36	\$3.1M	Attachment 13 (p. 7)	
Moore-Smith 2	Y8	-0.57	-\$0.9M	Attachment 13 Supplement (p. 62)	
Moore-Smith 3	Y8	-0.35	-\$0.0	Attachment 13 Supplement (p. 63)	
Whichard	b19b	0.5	\$1.5M	Attachment 13 Supplement (p. 91)	<i>Requires further modification for use with this route</i>
Atkission	Y19b	0.02	\$0.1M	Attachment 13 Supplement (p. 8)	Discussion – no decision
Schooley	b84	0.24	\$1.2M	Post Hearing Route Modification	Supported 01/13/2011
McGowan	b14c	?	?	Discussion at Open Meeting	Supported 01/13/2011 – follow pipeline crossing ranch
Savage	b90	-	-	Attachment 13 Supplement (p. 76)	Withdrawn

## Potential Modifications for McCamey D-Kendall Routes

EXHIBIT D  
Page 3 of 3

### Route MK63 (Modified MK15 Segrest)

Length: 138.45 miles with route modification to Y11 138.64 miles

Cost: \$360.5 million with route modification to Y11 approximately \$311 million

#### Segments:

b3a-b5a-b5b-b14a-b14ba-b84-b86-b90-Y5cc-Y7b-Y9-Y10b-Y11-Y12a-Y13-b23b-b29a-Y14-b29c-b29d-Y16-Y17b-Y18-Y19b-Y20-c1b-c1c-c14a-c14b-y22-y22a-c18ab-c18b-c21

Landowner	Segment(s)	Modified Length (miles)	Modified Cost (millions)	Source	PUC COMMISSIONERS
Runge3	b14a/b5b	0.33	\$1.2M	Attachment 13 Supplement (p. 73)	Supported 01/13/2011
Mudge	Y7b	0.11	\$1.6	Attachment 13 Supplement (p. 65)	Supported 01/13/2011
Skaggs	Y9	0.12	\$1.1M	Attachment 13 Supplement (p. 83)	
Atkission	Y19b	0.02	\$0.1M	Attachment 13 Supplement (p. 8)	Discussion – no decision
Schooley	b84	0.24	\$1.2M	Post Hearing Route Modification	Supported 01/13/2011
McGowan	b14c	?	?	Discussion at Open Meeting	Supported 01/13/2011 – follow pipeline crossing ranch
Savage	b90	-	-	Attachment 13 Supplement (p. 76)	Withdrawn



# Junction Airport Y-11 modified

approx 2700' from end of rwy  
utilizing lower structures as req'd  
scale: 1 inch = approx 600 feet

North

83

10

N 10th St

Cherry St

EXHIBIT

CVA  
55

tabbles



TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
AUSTIN, TEXAS

IN THE MATTER OF THE OPEN MEETING)  
OF THURSDAY, JANUARY 20, 2011 )

BE IT REMEMBERED THAT AT approximately  
9:35 a.m., on Thursday, the 20th day of January 2011,  
the above-entitled matter came on for hearing at the  
Public Utility Commission of Texas, 1701 North Congress  
Avenue, William B. Travis Building, Austin, Texas,  
Commissioners' Hearing Room, before BARRY T. SMITHERMAN,  
CHAIRMAN, DONNA L. NELSON and KENNETH W. ANDERSON, JR.,  
COMMISSIONERS; and the following proceedings were  
reported by William C. Beardmore and Lorrie A. Schnoor,  
Certified Shorthand Reporters.

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## PUC OPEN MEETING - ITEM 13 1/20/2011

1 first thing. The second thing is, with respect to  
2 transmission lines, I live in far northwest Austin.  
3 Some people say I live in Waco, but really I'm still in  
4 the Austin city limits.

5 Out on 183 one of the most popular  
6 fast-food restaurants in Austin is located under huge  
7 transmission lines, and it's one of the busiest ones.  
8 So it hasn't stopped people from going to that locale to  
9 get food. So -- and you're right under -- you are right  
10 under the transmission line.

11 So I would note that, too. As you  
12 acknowledge -- and Ken has said many times -- we see  
13 them everywhere. To the extent I ever had a problem  
14 with them, I don't have a problem with them now just  
15 because I realize what they bring our state.

16 AGENDA ITEM NO. 13

17 DOCKET NO. 38354; SOAH DOCKET NO.  
18 473-10-5546 - APPLICATION OF LCRA TRANSMISSION  
19 SERVICES CORPORATION TO AMEND ITS CERTIFICATE  
20 OF CONVENIENCE AND NECESSITY FOR THE PROPOSED  
21 MCCAMEY D TO KENDALL TO GILLESPIE 345-KV CREZ  
TRANSMISSION LINE IN SCHLEICHER, SUTTON,  
MENARD, KIMBLE, MASON, GILLESPIE, KERR, AND  
KENDALL COUNTIES

22 CHAIRMAN SMITHERMAN: Okay. Having  
23 delayed long enough, let's get into the meat of this.  
24 Katherine, why don't you kind of lay this out for us.

25 We got some late-filed letters from LCRA,

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 which I would like to go through in great detail, I  
2 think, pursuant to some of your recommendations, and  
3 then we just got one from the City of Llano. Is that  
4 right?

5 MR. JOURNEYAY: Junction.

6 CHAIRMAN SMITHERMAN: Junction. We need  
7 to talk about that and decide whether or not what we're  
8 going to do with these.

9 MS. GROSS: Okay. This is Docket 38354.  
10 This is the application of LCRA to amend its CCN for the  
11 proposed McCamey D to Kendall to Gillespie 345-kV CREZ  
12 transmission line. Subsequent to LCRA filing its  
13 application, the Commission determined that there is a  
14 cost effective alternative for the Kendall to Gillespie  
15 portion of this line.

16 Therefore, the ALJ didn't propose a  
17 recommendation for a route between those two  
18 substations. But the ALJs did propose MK15 modified  
19 which was Staff's recommended route for the McCamey D to  
20 Kendall portion of the line.

21 This is a priority project, and the  
22 deadline in this docket is January 24th.

23 CHAIRMAN SMITHERMAN: Right around the  
24 corner. So we talked about this at some length. The  
25 media reported we had six hours of testimony and

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 conversation -- not testimony but comment, conversation.

2 If I could summarize correctly, I think  
3 what we concluded is, we took the P lines off the table.  
4 Those are the ones that run on the northern end of the  
5 study boundary.

6 We focused most of our conversation on the  
7 I-10 routes and derivations of that; though,  
8 Commissioner Nelson, I recall that you also had some  
9 interest in the preferred route, and we talked a lot  
10 about the loop around Junction and what to do down on  
11 the southern end, whether to go through the Tierra Linda  
12 subdivision as part of MK15 modified or go all the way  
13 down I-10.

14 So what's your pleasure on this? Do you  
15 want to hear from LCRA with their letter or -- what do  
16 you guys want to do with these late-filed documents?

17 COMM. NELSON: Well, I did find what LCRA  
18 filed to be helpful. I also -- and I don't know if this  
19 is the appropriate time, but the reason I like to have a  
20 break, you know, after we listen to everybody talk is so  
21 we can go back and look at the evidence.

22 What I find sometimes -- not always, but  
23 sometimes -- what we hear at the meeting are comments  
24 that you-all are submitting to us. They're not  
25 evidence. So sometimes the evidence doesn't necessarily

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1 match what people say at the Open Meeting.

2 I found that to be really true with  
3 respect to that loop that goes north of the airport.  
4 There was a lot of conversation about how dangerous it  
5 would -- how it would affect taking off, but there  
6 wasn't a lot of testimony in the record about it.

7 So I think -- I looked -- and I looked at  
8 LCRA's letter and the accommodations they are willing to  
9 make north of the airport. I feel more comfortable with  
10 that.

11 So at this point, I am ready to take that  
12 preferred route off the table and so we can narrow it  
13 down even more, because I think you two were ready at  
14 the last meeting.

15 COMM. ANDERSON: Well, interestingly --  
16 let's talk about the LCRA preferred route, which I think  
17 is MK13. I was -- not knowing how this was all going to  
18 turn out and before -- because I, like you, went back  
19 and looked at the evidence in this case, particularly  
20 the evidence that surrounded the north and south routes  
21 around Junction -- and I'll get to that in a minute --  
22 but I was prepared to at least reconsider MK13 but with  
23 one condition.

24 The only way that I -- because it does --  
25 to give LCRA credit -- and the Judge recognized this in

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1 the case -- it did meet a number of our routing  
2 criteria, including the minimum number of habitable  
3 structures. But for all the reasons that the Judge  
4 mentioned, the only way that I would vote to approve  
5 that is if we monopolized the entire route. That would  
6 result in about \$42 million by my back-of-the-envelope  
7 calculation. That might be a little high, but using  
8 300 -- using 300,000 a mile. The result would be that  
9 you would eliminate the cost savings that that route  
10 had.

11                   However, it would be in the same ballpark  
12 as MK62 and MK --

13                   COMM. NELSON: 15.

14                   COMM. ANDERSON: -- and MK -- and the PFD  
15 route. They would all be around the same price. So I  
16 was prepared at least to discuss the LCRA preferred  
17 route.

18                   That's not necessarily my preferred  
19 choice. But getting to the issue about the evidence  
20 around Junction, Donna, I too went back and looked  
21 actually at the evidence. When I went in -- and I  
22 looked at the direct testimony, the rebuttal testimony,  
23 as well as transcripts of the cross-examination.

24                   When you do that, you find that most --  
25 while there was some concern expressed, I now understand

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1 why the Judge -- why the Judge picked the northern  
2 route. I think it clearly supported by a preponderance  
3 of the evidence, and most of the comments opposed really  
4 came in the form of argument in the exceptions and  
5 replies as well as comments made by parties at the last  
6 Open Meeting. Particularly with the changes that LCRA  
7 is willing to make, I think the northern route would be  
8 an acceptable route.

9                   That being said, I also was very intrigued  
10 by the LCRA letter. I do think before we address it,  
11 although I would ask -- I would ask Staff, I think, for  
12 some guidance, whether we need to, I guess, take up --  
13 if we want to talk about the LCRA letter, whether we  
14 need to -- they include in the letter what amounts to a  
15 motion to admit this or to give a good cause waiver  
16 before the submission to be admitted and take it under  
17 consideration.

18                   MR. JOURNEAY: They are actually asking  
19 for a good cause waiver of our -- we have a provision in  
20 our rule that says things that are not filed at least  
21 seven days before Open Meeting may not be considered is  
22 not at absolute ban.

23                   This Commission, I think, has the  
24 discretion to consider it or not consider it without  
25 even acting upon that request in your discretion.

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1                   COMM. ANDERSON: Okay. If we don't need  
2 to formally vote, I would like to consider it and take  
3 it up, because I don't know if you-all just -- if we --

4                   CHAIRMAN SMITHERMAN: Yeah, I agree. I  
5 don't know if it convinces me to do something  
6 differently. I really have a lot of questions. Unless  
7 we take it up, I don't think we can get to the  
8 questions.

9                   COMM. ANDERSON: That's right. I want to  
10 hear the questions. But I have to say that at first  
11 blush these changes are interesting around the south  
12 side.

13                   More importantly, I almost view them, when  
14 I looked at the maps, as falling within the minor  
15 deviation language that we already have, you know, if,  
16 in fact, the line remains on noticed property.

17                   I know LCRA in the letter -- well, there's  
18 really two issues. One is they prefer to be directed as  
19 opposed to exercising the discretion that we give in the  
20 orders which continues to trouble me a bit.

21                   The other is that I do want to, before we  
22 forget, grant -- whatever we end up doing, they asked in  
23 the letter to -- let's see; where is it -- that if the  
24 Commission chooses to approve this routing  
25 alternative -- and I'll say this: This is also true



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1 with respect to any routing alternative that we  
2 ultimately decide, that LCRA TSC would request as much  
3 flexibility as possible, you know, to possibly adjust  
4 and straighten the proposed routing adjustments, you  
5 know, post-order thereby saving additional cost.

6           You know, I think those are already in --  
7 that they already have that authority under our various  
8 paragraphs. But to the extent they feel like they don't  
9 have it, I would like to hear from them and what they  
10 propose, because I want to give them as much flexibility  
11 both to straighten -- but also to make the deviations  
12 necessary to accommodate individual landowners.

13           CHAIRMAN SMITHERMAN: Why don't we do this  
14 if it's acceptable to you-all: I would like to hear  
15 from LCRA. I would like to ask them a bunch of  
16 questions, and then we need to hear from the City of  
17 Junction who filed a letter because they seem to have  
18 some issues. Perhaps they're more procedural than  
19 substantive. So if that's okay with you-all.

20           Ferdie, let me start by saying, I'm  
21 looking at your Exhibit A, and I want to make sure I'm  
22 on the same page here. As I look at this, the yellow  
23 line was the proposal to underground this portion.

24           MR. RODRIGUEZ: That's correct.

25           CHAIRMAN SMITHERMAN: That's the amount

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1 that would equal -- round numbers -- 50-plus million  
2 dollars --

3 MR. RODRIGUEZ: That's correct.

4 CHAIRMAN SMITHERMAN: -- which I still  
5 have to scratch my head over.

6 And then the green line is labeled "CVA  
7 modification." Is that to say that was a modification  
8 that was put on the table at some point in the past and  
9 has been discussed? Give me some sense of that.

10 MR. RODRIGUEZ: Yes, Mr. Chairman. That  
11 modification -- that proposed modification was not part  
12 of the record. We finished the case without having the  
13 ability or the chance to look at this.

14 Mr. Bayliff contacted us sometime in  
15 December and asked if we would be willing to look at a  
16 modification. Brad came over and met with Mr. Mettie  
17 (phonetic) and myself, and this was our understanding of  
18 what they were proposing.

19 CHAIRMAN SMITHERMAN: So this landowner or  
20 landowners that would now be affected by the green  
21 line -- I'm sorry for those who don't have this map --  
22 but the green line -- were they noticed in this  
23 proceeding?

24 MR. RODRIGUEZ: Well, that was a question  
25 we had. One of the problems that we had with CVA's

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1 proposal was, we don't know if all the noticed issues  
2 had been taken care of. That was Point 1. Point 2 was  
3 that southern most point where the round circle is --  
4 the red circle -- 2400 feet south --

5 CHAIRMAN SMITHERMAN: Right.

6 MR. RODRIGUEZ: -- the height that that  
7 would have had to have been to be workable was not going  
8 to work for us, and we mentioned that to CVA. We said  
9 to us, "That is not safe." That's what we talked about  
10 last week.

11 CHAIRMAN SMITHERMAN: Well, let's focus on  
12 the notice issue first, because -- but I want to make  
13 sure that before we put something on the table that  
14 we've not short-cutted any of our required notice  
15 procedures.

16 MR. RODRIGUEZ: Well, might I address that  
17 by going to Exhibit B, which is our proposal?

18 CHAIRMAN SMITHERMAN: Okay. All right.

19 MR. RODRIGUEZ: When we talked about this  
20 with CVA, we thought that there might be notice issues.  
21 We were told that we thought -- or they thought that  
22 maybe there were only three affected landowners.

23 Once we got past -- well, let me back up  
24 for a second. We thought that there were some notice  
25 issues. So we told CVA, "That's not going to work for

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1 us."

2 We came to the Open Meeting last week,  
3 heard you-all talk about this, and it appeared that  
4 there was some movement in that direction. We went back  
5 and looked at the proposal that CVA had initially  
6 brought to us, and we said, "That's not going to work,  
7 but can we make it better? Can we fix it?" That's what  
8 we did over the weekend.

9 Mr. Symank who was here last week -- he's  
10 here again today -- Mr. Symank and his colleague were  
11 out in Junction in the rain on Saturday recording this  
12 whole area as well as the area north. On Monday, which  
13 was a holiday, but the Junction offices were open, our  
14 real estate folks went out there and went all through  
15 the property records to make sure that if there was a  
16 notice problem we could fix it.

17 That's why ours is different. Ours is  
18 different. From a notice perspective, we feel that we  
19 have accommodated -- or not accommodated -- we feel that  
20 we have accounted for all the landowners who would be  
21 directly affected by our proposal.

22 CHAIRMAN SMITHERMAN: When you say  
23 "accounted," what do you mean?

24 MR. RODRIGUEZ: They've been noticed.

25 CHAIRMAN SMITHERMAN: They received

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1 notice?

2 MR. RODRIGUEZ: They've been noticed.  
3 That's correct. And even as late as yesterday morning  
4 over on the eastern side we had a question about whether  
5 or not that deflection point would hit a non-noticed  
6 landowner. We fixed that. We moved it over so that --  
7 that little square that you see there, it says "max  
8 height 115 feet," all of that now is on noticed  
9 landowners.

10 And one of you-all, I think, read from the  
11 letter about additional flexibility. The reason we  
12 asked for that is because there may be a way to  
13 straighten it a little bit on the east side and on the  
14 west side, but we would have to discuss that with  
15 non-noticed landowners.

16 And if we could get a waiver of notice, it  
17 might work. At this point, we just don't know because  
18 we haven't had the time. What we presented to you here  
19 comes with no notice issues. We had people to make sure  
20 that that was the case, and it has no FAA issues because  
21 by -- over on the western side, by crossing the river  
22 almost at a perpendicular angle it's a shorter span.

23 We come down to the first square -- I  
24 think those are going to be six-pole dead ends -- to  
25 flatten them. We take the line from the vertical and

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1 turn it to a horizontal. It goes on six-pole -- it's  
2 sort of like out by Bergstrom if you-all know --

3 CHAIRMAN SMITHERMAN: Yeah, I know that.  
4 Yeah.

5 MR. RODRIGUEZ: So we flatten it, and we  
6 take it from a vertical to a horizontal which lowers the  
7 lines.

8 CHAIRMAN SMITHERMAN: That's a very low  
9 profile.

10 MR. RODRIGUEZ: It is. They are  
11 substantial structures. This is a 345 after all. But  
12 we take it from a vertical, take to a horizontal. We  
13 get down low. We move back. That southern most point  
14 now is about another 5- to 600 feet further south from  
15 the point where CVA had proposed that structure to be.

16 And by moving back, we're able to get down  
17 low, not only under the Part 77 surfaces but also under  
18 the obstruction clearing surface. We will notify the  
19 FAA. We typically notify the FAA, I think, if we're  
20 within 10,000 feet.

21 So we would notify them. We don't think  
22 it's going to be a problem, because we're under both  
23 surfaces now. That was our problem previously. While  
24 we might have been under the Part 77 surface, we didn't  
25 feel it was appropriate for us to build a structure that

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1 would take us over the obstruction clearance slope that  
2 would make us the obstruction instead of the trees.

3 Right now there's a line of trees that  
4 forms the obstruction clearance slope. When you take a  
5 line from the end of the runway, take it to the top of  
6 the tree and then you run the slope out as far as it  
7 will go.

8 COMM. ANDERSON: And you are also  
9 comfortable, because this, I believe, still in the  
10 floodplain, that it meets your reliability criteria?

11 MR. RODRIGUEZ: Yes, Commissioner. I  
12 think that's another issue that we had initially with  
13 CVA. Where they were proposing that we put lines --  
14 this is all floodplain, but we were awfully close to the  
15 active flood channel. We don't want to be there.

16 We can be in the flood zone -- in the  
17 floodplain, rather. And where we're proposing to put  
18 the structures, we think that's workable. We will  
19 probably fortify the foundations, perhaps use pontoon  
20 foundations to divert water for those rare occasions  
21 when the water does come out. But we're not in the  
22 flood channel.

23 We don't want big trees and other debris  
24 slamming up against the structures. We think where we  
25 proposed this that we can build this safely and

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1 efficiently and at a reasonable cost.

2                   COMM. ANDERSON: Because I -- you know, I  
3 read the various arguments and was -- I know CVA  
4 originally made the argument, "Well, it's just a  
5 100-year floodplain, and, you know, if you have to take  
6 it out of service," I found that to be completely  
7 unpersuasive to the point of unacceptable. These are  
8 345 lines.

9                   This project, frankly, has been needed,  
10 putting aside, you know, future development in West  
11 Texas. These lines have been needed for the transport  
12 of power into the south zone of ERCOT for a number of  
13 years now.

14                   The idea that you take it out of service  
15 is just not -- you voluntarily take it out of service  
16 because of flooding is not acceptable to me.

17                   MR. RODRIGUEZ: And, Commissioner, I  
18 understand that. In all candor, that was one of our  
19 problems, too. And Brad and I went back and forth about  
20 this.

21                   That was one of our questions, is, "Well,  
22 we didn't think that the Commission wanted to build a  
23 345 CREZ priority line in a place where we knew we were  
24 going to have to de-energize it on the regular basis."  
25 That just didn't make sense to us.



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1                   Where we're proposing to put it, we don't  
2 think we're going to have to do that. We wanted to give  
3 you -- let me back up a second, too. We wanted to give  
4 you-all options. I think throughout this process, even  
5 going back to the summer of '09 when I was sitting here  
6 with my friend Allen Nye, we heard from you-all that you  
7 wanted options, options, options, and that's what we've  
8 tried to do throughout this proceeding.

9                   We went back this weekend and looked at  
10 this after sitting here last week and hearing you-all's  
11 comments, hearing CVA's comments, trying to gauge the  
12 temperature of the parties and the community. Like I  
13 say, we were able to go back and take CVA's proposal and  
14 tweak it, fix it, put it in a locality where -- yeah,  
15 we're still in a floodplain, but we're not in the flood  
16 zone.

17                   We're not in an active flood zone. We  
18 don't think that that's going to be a problem. The  
19 North Llano River flows into the Llano which flows into  
20 the Pedernales. It's in our river basin. Mr. Symank  
21 when he took the stand talked to our folks -- our river  
22 folks. You know, there's a flood there not every 100  
23 years, not every 50 years but probably every other year.  
24 You're going to have flooding conditions.

25                   So when they designed this proposal we

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1 took that into account.

2 COMM. ANDERSON: Doesn't the Llano flow  
3 into the Colorado?

4 MR. RODRIGUEZ: What did I say?

5 CHAIRMAN SMITHERMAN: You said  
6 "Pedernales."

7 COMM. ANDERSON: You said "Pedernales."

8 MR. RODRIGUEZ: Oh, no. Thank you.  
9 Colorado. It's our river basin.

10 COMM. ANDERSON: Having boated on Lake LBJ  
11 a number of times...

12 MR. RODRIGUEZ: It's our river basin.

13 CHAIRMAN SMITHERMAN: Yeah. That's  
14 comforting to me, because you're in the river business.  
15 Let me ask you, though: What is generally the nature of  
16 this property? In looking at the satellite photos, it  
17 looks like it's undeveloped.

18 MR. RODRIGUEZ: It largely is,  
19 Mr. Chairman. We've got -- and I think probably it's  
20 largely because it's in a floodplain. On the western  
21 side there's a -- is it a quarry or a gravel quarry?

22 The other collection of structures is  
23 right there by the -- as you see the square box, the  
24 next round box you see some little warehouses there. I  
25 think those are chicken -- chicken sheds. And other

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1 than that there's just not a whole lot there. There's a  
2 park down towards the lower right-hand corner.

3           You see some baseball diamonds and there's  
4 a city park there that fronts on the river. This is not  
5 a developed area. One of the other problems or concerns  
6 we had as you look further south you start to get into  
7 the grid structure of the city of Junction.

8           CHAIRMAN SMITHERMAN: Right. Right.

9           MR. RODRIGUEZ: That's the other thing we  
10 want to do. We wanted to stay away from that as we  
11 could and still be safe, and I think we've done that.

12           CHAIRMAN SMITHERMAN: Well, Commissioner,  
13 Nelson, I really have to commend you. It was your  
14 insistence that we look at a way to thread the needle  
15 down here that I think prompted LCRA to do some more  
16 work on this.

17           Frankly, I was prepared to take the loop  
18 around the north. What are your thoughts on this?

19           COMM. NELSON: Well, I guess I would like  
20 to hear from the people who filed the letter from  
21 Junction first, because this is -- I mean, people who  
22 are uninvolved in our process don't know that sometimes  
23 we do come up with deviations at the last minute when  
24 we're considering it because we find that none of the  
25 solutions we have are what we want, but I'm willing to

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1 listen even to -- is anybody here from Junction?

2 MS. PENBERTON: No. The city of Junction  
3 cannot be here. They gave me -- they sent me an e-mail  
4 this morning with phone numbers that they could be  
5 called on if you wanted to talk to them. I told them  
6 that was highly unusual. They were complaining about  
7 CVA's proposal, and I referred them to the interchange  
8 to look at LCRA's newest proposal. And in conversations  
9 yesterday, we talked about whether or not it affected  
10 their hospital and their heliport, and LCRA said, "It  
11 does not." But they still don't want it -- they still  
12 do not want the line here, though, on the south side.

13 CHAIRMAN SMITHERMAN: So, Margaret, let us  
14 put you on the spot. From the staff legal perspective,  
15 this letter raises some issues about process, that  
16 this -- I'll quote them -- "This new solution for  
17 bypassing the Kimble County Airport has been suggested  
18 at the very end of this hearing process after the  
19 evidentiary phase has closed."

20 What's your thoughts on that?

21 MS. PEMBERTON: Well, I agree with  
22 Commissioner Anderson, that I think this is a deviation  
23 that could be made by your ordering language anyhow. It  
24 was on noticed landowners.

25 COMM. NELSON: Right. That's why we

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1 notice. I mean, that's the whole purpose for noticing  
2 is --

3 CHAIRMAN SMITHERMAN: Broad notice.

4 COMM. NELSON: Yeah. So that if we, the  
5 three of us, decide there's something that we like about  
6 the route but some area that we have concern, because  
7 actually the two areas that, you know, I've worked the  
8 most on are the area around the airport and then the  
9 area down by Kerrville. So...

10 COMM. ANDERSON: I have a question for  
11 Mr. Rodriguez. Do you have -- I was looking -- trying  
12 to go through the letter, and it may be there, but the  
13 modifications here -- this modification -- what's the --  
14 as opposed to the cost of the links that go north of the  
15 airport -- and let's not even take into consideration  
16 yet your proposals to -- if we went north to push it  
17 back even further, how does the links that you're  
18 proposing here in terms of cost going south compare to  
19 the loop around the north side of the airport?

20 Did you have any numbers? Just from a  
21 distance standpoint, it appears that it potentially even  
22 saves money. At the very least it could be a wash, but  
23 it could even save money by taking your southern route.

24 MR. RODRIGUEZ: It might. But if you  
25 don't mind, let me ask Mr. Symank to come up and address

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1 some of those questions. But I would tell you that  
2 generally the adjustment there to the south is in the  
3 neighborhood of \$5 million if you do some subtraction  
4 from --

5 COMM. ANDERSON: Is this incremental to  
6 the original link that paralleled I-10, or is it five  
7 million altogether?

8 MR. SYMANK: Repeat that.

9 COMM. ANDERSON: The five million, is it  
10 the incremental -- is that the incremental cost, or is  
11 it the -- or is that the total cost of this link or this  
12 part of the line?

13 MR. RODRIGUEZ: Would you have to take  
14 back out the 54 million for underground?

15 MR. SYMANK: Right. The net difference in  
16 MK63, I guess, as proposed and of the modification, you  
17 save approximately \$49 million.

18 COMM. ANDERSON: No, that's true if you  
19 buried it. Your original proposal, MK63, I think it is,  
20 would just parallel I-10 north of the Llano River.

21 MR. SYMANK: We didn't propose an overhead  
22 alternative.

23 CHAIRMAN SMITHERMAN: No, that had the  
24 burying in it.

25 COMM. NELSON: There's no way of comparing

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1 it because they were -- that's what led me to ask --

2 COMM. ANDERSON: Well, then, the five  
3 million you're proposing here, how does that compare to  
4 the links that go around the airport?

5 MR. SYMANK: If you compare --

6 COMM. ANDERSON: Without doing the changes  
7 that you propose, I just want to try to get apples to  
8 apples.

9 MR. SYMANK: Didn't we have that in the  
10 letter, Ferdie?

11 CHAIRMAN SMITHERMAN: While he's looking  
12 for that, Ken, here's the way I tried to do the math on  
13 that. My conclusion is that using this proposal results  
14 in a \$311 million cost, which is MK63, with the  
15 deduction of the undergrounding and the incremental cost  
16 for going south of the river.

17 Then I compare that to MK15, which is  
18 approximately 302 million. So they're basically the  
19 same from my perspective. There's a \$9 million delta.

20 MR. SYMANK: Between 8 and 9 million is  
21 the --

22 CHAIRMAN SMITHERMAN: Yeah.

23 COMM. NELSON: Right.

24 MR. SYMANK: And if you do the -- in the  
25 letter we expanded on another option to the north. If

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1 you do that, then you're within -- I would have to look  
2 up the number. You're within a half million dollars of  
3 each other.

4 COMM. ANDERSON: So the -- so we don't  
5 really save any money by going south versus looping  
6 around the airport. That's what I was trying to get a  
7 handle on, whether it's a per mile -- whether it's a  
8 cost per mile or whatever, whether -- what -- because it  
9 just strikes me that even before the adjustments, you're  
10 talking about going north, but this is a shorter route  
11 by a considerable distance which even if you -- at least  
12 if you average the cost on a per mile basis, there ought  
13 to be savings between this and MK32.

14 MR. SYMANK: Right. The difference is the  
15 nature of the structures you're doing. You have the  
16 river crossings -- all of that. When you really compare  
17 what you have to do, especially structures, you end up  
18 not saving as much as you would think. There is a  
19 differential there.

20 CHAIRMAN SMITHERMAN: Well, the other  
21 thing is, it's difficult to do this comparison because  
22 the loop around the north starts west of this some  
23 considerable distance on I-10, and then goes up and then  
24 crosses to the east and then it comes down an existing  
25 transmission line versus --



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1 MR. SYMANK: And that's why in our  
2 evaluations we actually came up with the \$49 million  
3 delta and worked from that in a lot of ways when we were  
4 comparing it over the weekend.

5 COMM. NELSON: I guess I have a question.  
6 On Page 3 of your letter, Ferdie --

7 MR. RODRIGUEZ: Yes.

8 COMM. NELSON: -- you say in the second --  
9 I guess it's the full paragraph -- no -- yeah. It's the  
10 second full paragraph. About half way down you say, "It  
11 has the potential depending on final alignment to impact  
12 two businesses," which you've discussed, "the gravel  
13 mining operation and the set of barns."

14 So what does that mean, "impact two  
15 businesses"? Impact in the way that it's within the  
16 500-foot that we typically discuss or impact in that  
17 they would have to be --

18 MR. RODRIGUEZ: What is it -- the chicken  
19 operation? It possibly may clip the corner of one of  
20 those sheds, in which case you might have to -- I don't  
21 know if you would move the whole shed, but you may have  
22 to cut off that part and maybe move it to the other side  
23 so that they're not in the right-of-way.

24 COMM. NELSON: Okay.

25 CHAIRMAN SMITHERMAN: You're not talking

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1 about putting the pole where the shed is. You're just  
2 talking about the shed being in the right-of-way  
3 underneath the lines?

4 COMM. NELSON: The lines.

5 MR. RODRIGUEZ: Right, right. So we would  
6 just move it over, or maybe we wouldn't move it over.  
7 That's one of the things that we were talking about. We  
8 are trying to thread the needle, and that was one of the  
9 impediments.

10 COMM. ANDERSON: That chicken operation, I  
11 guess I'll call it, does it involve -- is it a little  
12 farm or is it a purely commercial operation in which --  
13 does anybody live there or is it a commercial operation?

14 MR. SYMANK: I didn't observe a house down  
15 there. That's in the floodplain. The nearest houses  
16 were further away. It looks like Mr. Neiman may know  
17 who lives there and who operates it. He may be able to  
18 chime in here if he knows more than I do.

19 CHAIRMAN SMITHERMAN: Just introduce  
20 yourself for the record, please.

21 MR. NEIMAN: Bill Neiman. It's my  
22 understanding that the owner of those facilities there  
23 are for his horses and there's a riding arena there or a  
24 roping arena that is seen on the satellite, but I am  
25 positive he's not in a commercial chicken business.

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1 I'll also go ahead and mention while I've  
2 got the chair, the gravel mining which is next business  
3 that's listed in the letter has been abandoned, and it's  
4 no longer in operation.

5 CHAIRMAN SMITHERMAN: We've got to be  
6 careful here, because, you know, that's not testimony.  
7 You are not sworn in.

8 MR. NEIMAN: Anything else or --

9 CHAIRMAN SMITHERMAN: Thank you.

10 COMM. NELSON: And LCRA would do its best  
11 to work with those -- with whoever was affected I guess  
12 I would say.

13 MR. RODRIGUEZ: Absolutely. I think  
14 whether -- and, Curtis, you can correct me on this --  
15 but whether the gravel operation is defunct or not, we  
16 could work with them.

17 If we needed to run a structure or span  
18 it, we could work with them, but I don't think that  
19 that's an impediment; otherwise, we wouldn't have put  
20 that there in the first place.

21 MR. SYMANK: That's correct. There are  
22 stockpiles of gravel that I could see. Private  
23 property, I couldn't go down there over the weekend. I  
24 could see stockpiles. There was a well traversed road.  
25 That may just be normal traffic that they do if it's not

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1 in operation at this stage of the game.

2 But we would be able to work with them.

3 CHAIRMAN SMITHERMAN: You know,  
4 personally, it looks like an elegant solution to me.

5 COMM. NELSON: I agree. Sir, did you  
6 have -- I forget your name.

7 MR. ROSS: Yes, Chairman. Joe Will Ross  
8 on behalf of Junction Hotel Partners. I'm not here to  
9 complain or throw a wrench in the deal, but I'm astute  
10 enough to kind of sense the trend here to go -- my  
11 family in whom I represent, we're the only business  
12 interest in San Angelo -- excuse me -- in Junction that  
13 have intervened in this process.

14 We're back around on the west side of the  
15 southwest quadrant of the intersection of 83 and I-10 --  
16 the two motels. Now, while we're not directly affected,  
17 y10b crosses or comes through our neighbor just to the  
18 west and then turns there in the middle of their  
19 property a few hundred feet from our property -- I'm not  
20 quite sure -- and then it deviates south towards the  
21 North Llano River and crosses in some open space --  
22 floodplain -- I don't know quite sure.

23 And then it gets across 83 and then  
24 you-all get talking about all of these proposed  
25 modifications that Ferdie has been talking about.

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1                   We've consistently asked for -- if you-all  
2 decide to come through Junction in some form or matter,  
3 we would like monopolies. I think it's -- you know, I've  
4 listened at all of these hearings and I've been a lawyer  
5 in a lot of these hearings through this past year.

6                   I understand here in the big city that,  
7 yeah, you-all drive under these big, ugly lattice  
8 structures and things and you live under them and  
9 there's nice restaurants under them.

10                  COMM. NELSON: No. I didn't say "nice."

11                  (Laughter)

12                  MR. ROSS: Popular, popular. Excuse me.  
13 Popular, fast-food restaurants. Excuse me. I  
14 apologize. In Junction, in Sonora -- and you heard  
15 Mr. Atkission say last week, "We don't have them in our  
16 towns. We don't have them period."

17                  So it is very much of a shock to us. And  
18 these communities are part of the hill country, too. I  
19 would hope -- and I've asked for it if you're going to  
20 do it, put monopolies. And one other request -- and I  
21 hadn't seen this letter from LCRA until I got here this  
22 morning.

23                  And I've noticed this because I have  
24 eminent domain clients, too, and it's the post-order  
25 modifications that happen. And, you know, we are seeing

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1 it. You know, landowners who get the line, they say,  
2 "Well, now I want to move things." And then it goes,  
3 "Well, let's not go through the middle of our ranch or  
4 go through the middle of our property. Now, let's go  
5 over here to the property line."

6 Well, in our situation, we have two  
7 motels. Our western property line is within 100 feet of  
8 our canopy of the Best Western there in Junction.

9 Our western neighbor who did not intervene  
10 said, "Well, I want you to come all the way east. Go  
11 over there by that motel." They didn't intervene. They  
12 have chosen not to participate here.

13 COMM. NELSON: Our language takes the  
14 consent to make major or minor deviations. It takes the  
15 consent of all affected landowners.

16 MR. ROSS: That's where I'm going. I just  
17 want to make sure that that's there so we have a little  
18 bit of a -- no. We've participated. We would prefer it  
19 not go through Junction, but I can -- I'm smart enough  
20 to figure out that that's looking where it's going to  
21 go.

22 COMM. ANDERSON: The Judges -- the PFD  
23 itself recommends that where the line goes through urban  
24 areas like -- and I think they may have specifically  
25 mentioned Junction. They did Kerrville and some of the

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1 others -- that the Judge recommended monopolizing those  
2 segments.

3 Now, as I understand it, the LCRA  
4 adjustments here would have to be different structures.  
5 They couldn't be monopoled down, you know, where it's  
6 coming south. But as I also see these structures,  
7 they're going to be significantly lower than the typical  
8 lattice tower.

9 So you're in effect getting the benefit at  
10 least height-wise of -- in fact, it's probably lower  
11 than even a monopole would be. But I at least -- I  
12 mean, I have been assuming -- and we'll get to this  
13 depending on how this all flows through, making sure  
14 that, you know, the -- I mean, I was assuming we would  
15 honor the Judges' recommendation.

16 MR. ROSS: I missed that if they were  
17 going to go through Junction and monopoles. I must have  
18 overlooked it. But I appreciate your willingness to do  
19 that, particularly those of us on the west where it is  
20 more commercialized there at that intersection.

21 COMM. ANDERSON: It's on page -- I believe  
22 it's 25 of the PFD.

23 MR. ROSS: I believe you.

24 MR. RODRIGUEZ: Commissioner Anderson, if  
25 I might, Joe Will is correct. It's kind of a funny

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1 thing because after you go through these, you get to  
2 know folks and maybe it's the Stockholm syndrome. I'm  
3 not sure. But Joe Will has been an active participant  
4 in these cases on behalf of his family and his family's  
5 properties. He's correct. I talked to him before the  
6 meeting today.

7                   It's been our assumption that if we go  
8 through Junction we would monopole. And, in fact, we  
9 were prepared to ask for even additional flexibility to  
10 use monopoles in those instances where it made sense  
11 aesthetically or where the break between say lattice and  
12 poles would be just too abrupt that we would request  
13 flexibility to go even maybe beyond what you might be  
14 considering monopolizing for all the reasons that we've  
15 heard during the case.

16                   I mean, there are aesthetic reasons first  
17 and foremost, but we have no problem with Joe Will's  
18 request, and I think he's being very proactive in the  
19 sense that -- and he's right.

20                   COMM. ANDERSON: Yeah. I know you trust  
21 me, but on Page 25, "The ALJs support the use of  
22 monopoles to the extent it's cost effective particularly  
23 in areas with denser population" -- it goes on -- "such  
24 as along I-10 through populations -- a population center  
25 such as Sonora, Junction, and Kerrville."



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1 CHAIRMAN SMITHERMAN: Yeah.

2 MR. ROSS: I missed it.

3 CHAIRMAN SMITHERMAN: I'm looking right at  
4 it.

5 COMM. NELSON: Me, too.

6 MR. ROSS: And, Ferdie, we did discuss  
7 this this morning, and I appreciate their willingness  
8 and I appreciate you-all's willingness to listen.

9 MR. RODRIGUEZ: Joe Will is right.  
10 Post-order when you start talking to folks -- I think we  
11 even mention that later on in the later -- folks come  
12 out of the woodwork perhaps who have not been involved  
13 in the process and we're more than happen to talk with  
14 them, but given the level of interest that Joe Will has  
15 had in this case, I understand his point where if  
16 somebody comes and speaks with us afterwards and wants  
17 to put it on their property line, well, that's on the  
18 other side of Joe Will's property line which is right  
19 next to the Best Western.

20 CHAIRMAN SMITHERMAN: Right.

21 MR. RODRIGUEZ: And --

22 CHAIRMAN SMITHERMAN: I think this is a  
23 workable solution.

24 COMM. NELSON: Right.

25 MR. ROSS: Thank you.

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1 CHAIRMAN SMITHERMAN: Thank you. So my  
2 sense is that with this discussion we are comfortable  
3 with this southern route.

4 Does that mean that you-all are supportive  
5 of one of the routes that primarily goes I-10 which  
6 would either be the MK15 modified or essentially  
7 route --

8 COMM. NELSON: MK63.

9 CHAIRMAN SMITHERMAN: MK63. So I think  
10 we're -- let's say this: Are we -- are you guys  
11 comfortable with going south of Junction?

12 COMM. NELSON: Yes.

13 COMM. ANDERSON: Not south of Junction;  
14 going south of the Llano River.

15 CHAIRMAN SMITHERMAN: Of the Llano River.  
16 Right. As proposed by --

17 COMM. NELSON: North of Junction.

18 CHAIRMAN SMITHERMAN: -- as proposed by  
19 the LCRA letter?

20 COMM. NELSON: Yes.

21 CHAIRMAN SMITHERMAN: Let's talk about the  
22 western side of this study area. I had suggested that  
23 we follow MK15 which for much of the area was -- or some  
24 of it was consistent with the preferred route and then  
25 it comes down to a southern route and then goes down

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1 1674, I think it is. Were you okay with that?

2 COMM. NELSON: I am okay with that. I  
3 think we have some, probably, landowner modification  
4 issues that were raised at the last Open Meeting that we  
5 still need to talk about, like especially the one lady  
6 whose property is on two sides.

7 CHAIRMAN SMITHERMAN: Ms. Savage, I think  
8 her name is. Yeah. She's affected by two -- in two  
9 places.

10 COMM. ANDERSON: We're talking about the  
11 western side now, not the --

12 CHAIRMAN SMITHERMAN: Yes.

13 COMM. NELSON: Yes.

14 CHAIRMAN SMITHERMAN: Right. Though I do  
15 have a question. Now we're going to go down I-10  
16 instead of routing around the northern part of Junction  
17 if her property, which I think is close to that  
18 intersection, is still impacted -- her urban property,  
19 if you will.

20 Hold on. So are you going -- yes, sir?

21 COMM. ANDERSON: I'm looking back at my  
22 notes at the Savage modifications. And while -- I have  
23 it on my list as -- that we ought to accept it. If I  
24 recall, she's the one who came and said that she's  
25 withdrawing her request because her real estate advisor

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1 when they looked at it actually said that the  
2 modification she was requesting would be more adverse  
3 economically than the original LCRA line.

4 Now, that's my recollection.

5 COMM. NELSON: I think there were two  
6 modifications, and she withdrew one of them.

7 MS. GROSS: Yeah. She had property on  
8 b84. I believe that's the property you're talking  
9 about, that she withdrew that after talking to her real  
10 estate agent. And then she also had property I think on  
11 b23a.

12 And if you went with the route that goes  
13 south of the airport, then that would no longer be an  
14 issue.

15 MR. RODRIGUEZ: That is correct.

16 CHAIRMAN SMITHERMAN: Yeah. Ken, I think  
17 my handwritten notes -- and this is on Page 76 of 95,  
18 which is corrected, Attachment 13, Supplement 1, with  
19 Bates -- our Bates note of Attachment No. 4, Savage  
20 segment modification says "withdrawn by landowner at the  
21 Open Meeting."

22 That was the one where we would have run  
23 down the western side of her land and then gone east.  
24 And apparently after consultation it is better to go  
25 along the northern and eastern boundaries.

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1 I don't know if she's here. When we get  
2 to that, we could ask her for clarification. Okay.  
3 Since we don't have anyone from the city of Junction  
4 here, I don't think there's any further questions there.  
5 Do you-all want to talk about the eastern portion of  
6 this, whether we're going to go along MK15 modified  
7 through Tierra Linda and then parallel more or less the  
8 gen tie or continue down I-10?

9 COMM. NELSON: Sure.

10 COMM. ANDERSON: Well, I gave a lot of  
11 thought to this, and I prefer -- with all due respect, I  
12 prefer using the MK62 segments, the -- in other words,  
13 continuing down -- down I-10.

14 There may be some minor adjustments that  
15 can be made both in Kerrville, but more importantly when  
16 you get past Kerrville to the avoid some habitable  
17 structures. LCRA I think identified a couple of those.

18 Again, I think most of those adjustments  
19 can be -- you know, is -- are well within the authority  
20 and the discretion we've given LCRA just in our standard  
21 ordering paragraphs. But to the extent that LCRA  
22 prefers them identified I'm happy to go through them.

23 But I really -- I think going through  
24 Kerrville I find that the transmission lines,  
25 particularly if monopoled, are a lot less intrusive than

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1 an interstate highway. And with LCRA's ability to work  
2 a little bit with the height and make other, you know,  
3 aesthetic accommodations and minor deviations, I think  
4 most of those can be adjusted.

5 I have a hard time really seeing where the  
6 economic loss comes from. As an example you used, a  
7 popular fast-food restaurant is actually under lines,  
8 and I see that myself in other areas of the Hill Country  
9 that I frequent with some regularity.

10 COMM. NELSON: Well, I agree with you,  
11 except I think that it would be MK63 since we've decided  
12 to go --

13 COMM. ANDERSON: Well, whatever the route  
14 is. What was originally proposed is MK62 as an  
15 alternative to deviating through Terralingua --  
16 Terralingua -- Tierra Linda --

17 COMM. NELSON: Right.

18 COMM. ANDERSON: -- is the route I  
19 would -- that I would recommend.

20 COMM. NELSON: I agree with you. And  
21 always the Chairman mentioned at last week's meeting,  
22 people at the Kerrville and Mason open houses preferred  
23 paralleling existing compatible right-of-way, and people  
24 at the Fredericksburg open house preferred running down  
25 I-10, of course.

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1 I would also note that I think the ALJ --  
2 she said MLK62, but that's because she wasn't aware of  
3 this modification on the airport. So she said it was a  
4 good alternative. And so for those reasons and the ones  
5 that you articulated, Ken, I would agree and I do think  
6 there is this modification on the far eastern side of  
7 the route that can be made to avoid a couple of  
8 structures.

9 COMM. ANDERSON: I think it eliminates --  
10 I think it was five or six.

11 COMM. NELSON: Yeah. So...

12 CHAIRMAN SMITHERMAN: I agree with you  
13 both. As I recall, those that showed up that were  
14 intervenors along that route, there were three  
15 intervenors.

16 Of course, Mr. Atkission, the car dealer,  
17 showed up. We appreciate him doing that. I think we  
18 can work behind his store in a way to make that more  
19 acceptable. And then Mr. Fakhr had his attorney here,  
20 but he wasn't here. I'm not sure what we can do there.

21 I think there was one other one. I think  
22 the recommendation that you-all are talking about now as  
23 we get closer to Comfort and the substation to sort of  
24 go northeast and then around and then come back avoids  
25 maybe five or six structures.

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1                   COMM. ANDERSON: I think utilizing -- I  
2 think the links are c14c and c18aaa if my eyesight is  
3 not -- in other words, avoiding Y22 and Y22a, as I  
4 recall from my map which --

5                   MS. CRUMP: Mr. Chairman, before we leave  
6 the Kerrville area, may I make some suggestions?

7                   CHAIRMAN SMITHERMAN: Sure. We're going  
8 to try to work through these modifications, but go  
9 ahead.

10                  MS. CRUMP: No, I understand. And for the  
11 record I'm Georgia Crump. I represent the City of  
12 Kerrville, Kerr County, Cecil Atkission and KPUB. For  
13 your information, if you have any questions, Mr. Todd  
14 Parton, the City Manager of Kerrville, is here today.

15                  We understand that, you know, the  
16 Commission has determined to come down I-10. We would  
17 like to request that monopoles -- and I know that's in  
18 the PFD, but monopoles be used throughout the city  
19 limits of Kerrville and its ETJ.

20                  Kerrville has a one-mile ETJ. I have some  
21 maps that show you the extent of that. I know that's  
22 been done in other dockets to include the ETJ and  
23 monopoles.

24                  CHAIRMAN SMITHERMAN: The ETJ is how long?

25                  MS. CRUMP: It's one mile outside --



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1 CHAIRMAN SMITHERMAN: On each end? So  
2 would it be two miles cumulative?

3 MS. CRUMP: Two miles beyond the city  
4 limits, yes, sir.

5 CHAIRMAN SMITHERMAN: So one to the west  
6 and one to the east?

7 MS. CRUMP: Right. I do have maps of that  
8 if you would like to see the extent of it. It would  
9 take it west of the Harper Road and I-10 intersection  
10 about a mile and then about a mile past the Whiskey  
11 Springs development on -- I believe it's on Y20 at that  
12 point.

13 MR. JOURNEAY: Could you give us what the  
14 total length would be then?

15 MS. CRUMP: I didn't have the scale for  
16 that. I think it could be six to eight miles.

17 COMM. NELSON: So about 3 million.

18 COMM. ANDERSON: The estimate was 200,000  
19 and 300,000 a mile. This is -- because it's going along  
20 I-10, now you've got land acquisition costs that are  
21 going to be higher.

22 You know, if you averaged it out to 250 --

23 MR. SYMANK: Can I provide some  
24 information that will help you make that?

25 COMM. NELSON: Sure.

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1 MR. SYMANK: We assessed roughly a 5.2  
2 mile segment around Kerrville. In addressing terrain,  
3 the topography, the number of angles and dead ends, the  
4 values that we used to estimate the project, it's about  
5 \$6 million, roughly 5.2 miles; so within that range. If  
6 it's a little longer, it will be a little more, but that  
7 gives you an order of magnitude.

8 COMM. ANDERSON: That's total cost,  
9 though?

10 MR. SYMANK: Yes.

11 COMM. ANDERSON: Not incremental.

12 MR. SYMANK: No, that's incremental.

13 CHAIRMAN SMITHERMAN: That's monopole over  
14 lattice for that distance.

15 COMM. ANDERSON: Oh, okay. I for one --  
16 of course, you know where I come out on monopoles. But  
17 I for one would -- I believe the City of Kerrville's  
18 request is reasonable, and it's consistent with the  
19 recommendation made in the PFD.

20 MR. JOURNEAY: It also will duplicate some  
21 other modifications I think you were already thinking  
22 about monopolizing.

23 CHAIRMAN SMITHERMAN: Right. Exactly.  
24 I'll go along with that.

25 COMM. ANDERSON: This kind of solves the

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1 problem, I mean, of having to go into individual  
2 requests, just if you just monopole through there.

3 MR. RODRIGUEZ: Commissioner, just to  
4 provide some historical perspective -- and I know  
5 Georgia was in our case -- but the Clear Springs to  
6 Hutto case we monopoled through Hutto and through  
7 Hutto's ETJ.

8 CHAIRMAN SMITHERMAN: And the ETJ.

9 COMM. ANDERSON: I remember that because  
10 that was my first --

11 CHAIRMAN SMITHERMAN: Yes. It was your  
12 welcome to the Commission.

13 MS. CRUMP: I appreciate that. One thing  
14 we'd also like to discuss on the record, I've had  
15 numerous discussion with Mr. Rodriguez about the types  
16 of monopoles, the heights and where the structures might  
17 be located.

18 I know LCRA will work with location of  
19 structures with the landowners. Because this is in the  
20 gateway area of the City of Kerrville, there are  
21 different aesthetic values related to the weathering  
22 monopoles versus concrete and steel monopoles.

23 We would like to have the ability to work  
24 with LCRA to determine in conjunction with the property  
25 owners the types of monopoles and the spacing and

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1 perhaps the height. Mr. Rodriguez has suggested that  
2 all of those things are flexible and variable and that  
3 they would work with the property owners.

4 We would ask also that the city be  
5 involved in that because of the impact on the entrances  
6 to the city.

7 MR. RODRIGUEZ: Commissioners, I mean,  
8 that goes without saying. We've worked with Kerrville  
9 for years on a number of matters. If it allays any  
10 fears and Ms. Crump's, absolutely, we would be glad to  
11 work with Kerrville on heights.

12 You know, obviously, where we put these is  
13 primarily an engineering decision, but there are things  
14 that the engineers can do with specialty design,  
15 specialty structures, heights, weathering poles.  
16 Georgia is right. We've talked about that. We'd be  
17 glad to continue that discussion.

18 CHAIRMAN SMITHERMAN: Well, I know that  
19 you've done that with Austin Energy as well in and  
20 around the Austin area, because I can drive west on Bee  
21 Cave and encounter three or four different types of  
22 monopoles.

23 I assume that those were by request of  
24 those communities.

25 COMM. ANDERSON: Is there a specific -- so

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1 you would undertake to do that anyway without an  
2 ordering paragraph or some other direction?

3 MR. RODRIGUEZ: We would if it makes  
4 Kerrville feel more comfortable. You know, if you want  
5 to put something in, that would be fine, but we  
6 definitely will be working with Kerrville and Junction.

7 COMM. NELSON: We are kind of running out  
8 of time in terms of drafting of the order. So if we can  
9 limit what --

10 MR. JOURNEAY: Well, typically, our  
11 monopolizing ordering paragraph hasn't directed them to  
12 work with anyone. It has given them the --

13 COMM. ANDERSON: Can we modify it in this  
14 case to just direct them? That maybe gives LCRA a  
15 little bit of comfort. And to the extent it gives the  
16 City of Kerrville additional comfort, I'm fine with that  
17 if my colleagues are.

18 MR. RODRIGUEZ: We'd be happy to work with  
19 Kerrville and the landowners.

20 COMM. NELSON: Could we finish what we're  
21 going to do in this case and then go to CenterPoint and  
22 then maybe Staff could come back with the language and  
23 we could make the final approval?

24 Do we need to do that or can we delegate  
25 to you?

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1 MR. JOURNEAY: Well, I think we're going  
2 to need some discussion on the ordering paragraphs when  
3 we -- before we make our final motion.

4 COMM. NELSON: Right. So would it help if  
5 we gave you time to go away and work on it -- well, not  
6 you, but Katherine?

7 MR. JOURNEAY: Well, I think it's going to  
8 depend exactly what decision we make.

9 CHAIRMAN SMITHERMAN: Yeah. Let's talk  
10 about it a little bit more, perhaps.

11 MR. ROSS: Chairman, Joe Will Ross again  
12 for Junction Hotel Partners. Ferdie and I talked --  
13 whenever I talked to him earlier this morning, the same  
14 thing that Georgia has asked for in Kerrville as far  
15 as -- not necessarily location, but the type of  
16 structures, monopoles and height, could we have that  
17 same leeway?

18 CHAIRMAN SMITHERMAN: Yeah. Junction.  
19 Yes.

20 COMM. ANDERSON: I think that's right.  
21 Ferdie, one question that I have -- you asked in your  
22 letter and some of your post-PFD pleadings as well as I  
23 think on more than one occasion at the Open Meeting for  
24 this flexibility and that flexibility.

25 I guess my question is, do you have

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1 particular language that is not -- that is not in our  
2 standard ordering paragraphs with respect to minor  
3 deviations and major deviations that gives you comfort?

4                   What I don't want to have happen is six  
5 months from now landowners calling us saying, "Well, we  
6 were told they were" -- and, you know, I'm just -- I  
7 want to avoid -- I want to give you the comfort that you  
8 need, the authority you need so if there is language,  
9 then, you know, during lunch or something if you can  
10 sketch something out and get it -- and work with CADM  
11 staff --

12                   MR. RODRIGUEZ: We'd be glad to,  
13 Commissioner.

14                   COMM. ANDERSON: So that we can look at it  
15 before we actually vote on the order. Does that --

16                   COMM. NELSON: That's fine.

17                   MR. JOURNEAY: Mr. Chairman, before  
18 you-all move off this monopolizing, we have a county judge  
19 here, Charlie Bradley, who would like to also address  
20 you on part of this line out to the west. He just came  
21 up --

22                   CHAIRMAN SMITHERMAN: Sure. Come on.

23                   JUDGE BRADLEY: Thank you. For the  
24 record, my name is Charlie Bradley. I'm the Schleicher  
25 County Judge. I know we've been talking about mainly

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1 the populated areas down here on the south.

2 I just wanted to reiterate and ask the  
3 Commission to consider the use of monopoles through some  
4 of the other unpopulated areas in Schleicher County.

5 In August we had -- the court unanimously  
6 decided to file as an intervenor, and that was our main  
7 concern, was the use of monopoles through Schleicher  
8 County. It looks like the Commission is receptive to  
9 those ideas, of course, in the more populated areas.

10 COMM. NELSON: So --

11 JUDGE BRADLEY: Yes, ma'am.

12 COMM. NELSON: I don't know if you can  
13 answer this. If you can't, Ferdie could answer it. Do  
14 you know what the distance is through Schleicher County?  
15 It looks pretty long.

16 CHAIRMAN SMITHERMAN: Yeah.

17 COMM. ANDERSON: It's about six miles.

18 COMM. NELSON: Oh, no. It's longer than  
19 that.

20 COMM. ANDERSON: Oh, this is the  
21 Kendall --

22 COMM. NELSON: Yes.

23 JUDGE BRADLEY: I mean, when we made this  
24 determination we realized that the line was going to go  
25 through a major portion of Schleicher County. And



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1 through concerns of citizens that have addressed the  
2 Court, they -- we were not going to try to side with one  
3 route or another. Just the main thing was that we  
4 wanted the line to be the least obtrusive as possible.

5 CHAIRMAN SMITHERMAN: Yeah. Judge, I  
6 personally cannot support that.

7 JUDGE BRADLEY: Okay.

8 CHAIRMAN SMITHERMAN: Because most of this  
9 is rural, including at least one landowner who wants it  
10 on his property -- his or her property -- and did not  
11 request monopoles.

12 So, I mean, perhaps I'm willing -- you  
13 know, my colleagues may feel differently. Right there  
14 at the substation maybe there's something we need to do  
15 as we come out of the McCamey D substation, but in terms  
16 of the entire county, I can't support that.

17 COMM. ANDERSON: It appears to be about  
18 20 -- 20, 24 miles through the county. You know,  
19 certainly the links through the guy who's willing or  
20 whoever -- he or she -- it's not necessary. But, again,  
21 LCRA has authority under our ordering paragraph if  
22 it's -- you know, to be a little flexible. I'm not sure  
23 I want to order it.

24 MR. RODRIGUEZ: Commissioners -- to answer  
25 your question, I think, Commissioner Nelson, it's about

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1 33 miles in Schleicher County.

2 COMM. NELSON: Yeah. I'm sorry. I have  
3 to vote with Barry on this, too, with great -- I'm  
4 sorry. I apologize to you, but --

5 JUDGE BRADLEY: Well, we were just -- I  
6 mean, that was one of our concerns and we felt like we  
7 should at least ask. If you never ask, you sure don't.

8 CHAIRMAN SMITHERMAN: It never hurts to  
9 ask.

10 COMM. NELSON: That's right.

11 (Laughter)

12 JUDGE BRADLEY: That was our concern, and  
13 I just wanted it to be known.

14 CHAIRMAN SMITHERMAN: Thank you, Judge.

15 JUDGE BRADLEY: Thank you for your time.

16 MS. CRUMP: Mr. Chairman, I have one issue  
17 that the City Council of Kerrville is particularly  
18 interested in beyond the monopolies.

19 In the area where Highway 16 intersects  
20 with Interstate 10, that is what everyone has referred  
21 to as the gateway to Kerrville. If you've ever been out  
22 there, it's a very hilly area.

23 There's a beautiful rock wall sign along  
24 with Mr. Atkission's large flag. The City Council has  
25 asked you to consider whether that intersection and I

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1 guess the small portion of the line on either side of  
2 Highway 16 as it approaches I-10 could be placed  
3 underground. That would remove from a visual impact to  
4 the gateway --

5 CHAIRMAN SMITHERMAN: No.

6 MS. CRUMP: -- the crossing of the  
7 highway --

8 COMM. ANDERSON: If it's anything like the  
9 \$50 million, that's --

10 COMM. NELSON: And it will be the same  
11 because it's the same type of --

12 MS. CRUMP: I had asked LCRA to price it  
13 out. I had not heard back from them on what that would  
14 be.

15 CHAIRMAN SMITHERMAN: Well, they priced  
16 out the Tierra Linda section for us and it was  
17 70 million?

18 COMM. NELSON: 70 million.

19 MR. SYMANK: 62.9.

20 CHAIRMAN SMITHERMAN: For what, a mile?

21 MR. RODRIGUEZ: No, for the 4,000 feet.

22 CHAIRMAN SMITHERMAN: Less than a mile.

23 COMM. NELSON: Three-quarters of a mile.

24 CHAIRMAN SMITHERMAN: Of undeveloped  
25 property, not having to deal with roads and drainage and

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1 overpasses and --

2 MR. RODRIGUEZ: They're transition  
3 stations at either end where the line goes down and  
4 where it comes back up again.

5 COMM. ANDERSON: What was the -- that  
6 50 million or 54 million for the burying, that was what,  
7 half a mile?

8 MR. RODRIGUEZ: Half a mile.

9 MR. SYMANK: It was 2500 feet there.

10 MR. RODRIGUEZ: And Tierra Linda is about  
11 3,000 --

12 COMM. ANDERSON: It was three-quarters of  
13 a mile, I guess -- no, no, a half a mile.

14 COMM. NELSON: It was half a mile. Tierra  
15 Linda was about three-quarters of a mile.

16 MR. RODRIGUEZ: Four-fifths of a mile.

17 CHAIRMAN SMITHERMAN: Sorry. I can't  
18 support it. We'll do the best we can with monopoles and  
19 routing.

20 MS. CRUMP: Thank you.

21 CHAIRMAN SMITHERMAN: So why don't we --  
22 let's work our way perhaps from the Comfort substation  
23 back toward the west with modifications. For example,  
24 Ken had suggested or Donna -- one of you -- let me get  
25 my map here.

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1 I think the modification, Ferdie, is to  
2 use c14c and c18aa. That takes it to the northeast and  
3 then east and then south right before you get to the  
4 substation.

5 MR. RODRIGUEZ: Yes, sir. That's that  
6 little loop?

7 CHAIRMAN SMITHERMAN: Yes. Right? That's  
8 what you were talking about. This loop right here  
9 (indicating)?

10 COMM. ANDERSON: Yes.

11 CHAIRMAN SMITHERMAN: Right down here  
12 (indicating). Here it is.

13 COMM. ANDERSON: Yes, because it avoids  
14 all those habitable structures right in here  
15 (indicating).

16 CHAIRMAN SMITHERMAN: Okay. Commissioner  
17 Nelson, are you okay with that?

18 COMM. NELSON: I'm fine with that, and I  
19 agree with that. I had looked at that, too, as a way of  
20 reducing the number of habitable structures.

21 CHAIRMAN SMITHERMAN: Then I think the  
22 next one is working around Mr. Atkission's car  
23 dealership?

24 COMM. ANDERSON: Yeah. I'm looking at  
25 that as a matter of fact as we speak. It --

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1                   COMM. NELSON: And he seems specifically  
2 concerned about the flag pole at his dealership.

3                   COMM. ANDERSON: I'm fine with that  
4 modification. It looks like -- LCRA says it's  
5 technically feasible and it adds less than a 10th of a  
6 mile.

7                   CHAIRMAN SMITHERMAN: So to be clear, what  
8 we're talking about, this would be Y19b, Y20  
9 modification which takes it around the north of the  
10 store of the dealership.

11                   I would encourage you to work with him,  
12 because I think the testimony -- it wasn't clear to me  
13 how far back his property went. So work with him on  
14 placement. It's going to be on his property still, but  
15 he may want it further from the back of the dealership.

16                   MR. RODRIGUEZ: Right. We absolutely will  
17 do that.

18                   CHAIRMAN SMITHERMAN: And there's that  
19 hill behind there. So it may actually blend in. Maybe  
20 he wants a different color pole or something.

21                   MR. RODRIGUEZ: The hill is back there and  
22 then a little bit higher up is the cross.

23                   CHAIRMAN SMITHERMAN: Right.

24                   COMM. NELSON: Right.

25                   CHAIRMAN SMITHERMAN: Continuing to the

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1 west, I think there was one more.

2 COMM. NELSON: There was the discussion  
3 that Ken brought up about crossing the interstate to  
4 avoid some of the mobile homes, but LCRA said --

5 COMM. ANDERSON: I think LCRA said that's  
6 not a --

7 COMM. NELSON: Feasible.

8 COMM. ANDERSON: -- and the City of  
9 Kerrville didn't like it either. So...

10 COMM. NELSON: I just didn't know if  
11 that's what Barry was thinking about.

12 CHAIRMAN SMITHERMAN: I was thinking I was  
13 thinking about Ms. Mary Elizabeth Clay. She's on I-10  
14 east of Junction, b29a.

15 I think she was the other intervenor. Is  
16 that right, Davida? Does that sound familiar, guys,  
17 Mary Elizabeth Clay?

18 MR. RODRIGUEZ: Not right off the bat. If  
19 you would give us a second --

20 CHAIRMAN SMITHERMAN: Link b29a.

21 COMM. NELSON: It looks like it's just  
22 east of Junction. She's still affected if we use the  
23 southern -- the I-10 part of the route, Barry?

24 CHAIRMAN SMITHERMAN: Yeah. I think she's  
25 just east of where the proposed northern loop was going

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1 to come down and intersect.

2 So I think she's just east of the  
3 intersection of b23b and I-10.

4 MR. RODRIGUEZ: Mr. Chairman, are you  
5 referring to a particular attachment, because we're  
6 having trouble finding her. If she's on the link you  
7 suggested, she would still be affected. We're just  
8 having trouble finding --

9 CHAIRMAN SMITHERMAN: Yeah. My document  
10 is Clay Exhibit 2, Direct Testimony of Intervenor Mary  
11 Elizabeth Clay. Let's see.

12 Okay. Davida tells me that in her  
13 testimony she requested monopolizing. I don't recall  
14 exactly how big her property was. Why don't we do this:  
15 Let's take a five-minute break. You guys take a look at  
16 this.

17 That's the only other one that I had  
18 before we get out to 1674.

19 MR. RODRIGUEZ: Okay.

20 COMM. ANDERSON: I have one on Y9 that was  
21 included.

22 CHAIRMAN SMITHERMAN: Let's take a  
23 five-minute break.

24 COMM. ANDERSON: Sure.

25 (Recess: 11:25 a.m. to 11:35 a.m.)



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1 CHAIRMAN SMITHERMAN: Okay. Let's go back  
2 on the record. Okay. Please grab a chair.

3 As we broke, we were talking about Mary  
4 Elizabeth Clay. Did you guys find that?

5 MR. RODRIGUEZ: Not really.

6 CHAIRMAN SMITHERMAN: Okay.

7 MR. RODRIGUEZ: Mr. Chairman, let me  
8 explain. Our Attachment 13 and the corrected  
9 supplemental Attachment 13, all of those modifications  
10 were included if they were feasible from an engineering  
11 point of view.

12 CHAIRMAN SMITHERMAN: Okay.

13 MR. RODRIGUEZ: And as long as they didn't  
14 affect a nonnoticed landowner. If she's not in that  
15 list --

16 CHAIRMAN SMITHERMAN: Okay. Let me just  
17 tell you what her testimony said. I think we've got  
18 this covered by our standard paragraphs.

19 She requested, quote, lower-lying  
20 elevations and adjustments -- possible adjustments --  
21 for hunting and recreation, so...

22 MR. RODRIGUEZ: We can deal with that.

23 CHAIRMAN SMITHERMAN: I think you can deal  
24 with that.

25 MR. RODRIGUEZ: We can deal with that.

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1 CHAIRMAN SMITHERMAN: So now I'm going to  
2 go back to your attachments. I'm working my way from  
3 east to west. And the next one -- I don't know if we  
4 want to do this one or not -- is Skaggs segment  
5 modification. This is Page 83 of 95. I -- hmm. You  
6 guys have this one?

7 MR. RODRIGUEZ: Yes, we do.

8 CHAIRMAN SMITHERMAN: Supplement 1, Page  
9 83 of 95. It looks like this landowner is suggesting  
10 a -- coming off of I-10 and moving north. Do you know  
11 if this is all within that property owner's property?

12 MR. RODRIGUEZ: Mr. Chairman, it looks in  
13 our -- in our documents, it looks like it is on their  
14 property, on the backside of their property.

15 COMM. ANDERSON: I think they're just  
16 asking --

17 MR. RODRIGUEZ: On the property line.

18 COMM. ANDERSON: -- for it to be moved off  
19 the front of their property to the back of their  
20 property.

21 MR. RODRIGUEZ: Yes.

22 COMM. ANDERSON: And I'm fine with that.  
23 It's a tenth of a mile -- a little over a tenth of a  
24 mile, if I look at the adjustment.

25 CHAIRMAN SMITHERMAN: I would think this

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1 would be consistent with our language that we already  
2 have.

3 COMM. ANDERSON: I think it is.

4 MR. JOURNEAY: Commissioners, looking at  
5 this, though, I think we have some concern of whether  
6 those ends, where it diagonals up to the back of their  
7 property, is necessarily on their property. I guess  
8 maybe we need to look at a property boundary map.

9 COMM. ANDERSON: Well, obviously, LCRA  
10 can't -- I mean, this is the type of property -- of  
11 change that I think they could make without us directing  
12 them to.

13 MR. JOURNEAY: Okay.

14 COMM. ANDERSON: But obviously it can't  
15 cross another landowner diagonally unless that landowner  
16 wants to consent, so...

17 MR. RODRIGUEZ: That's correct.

18 CHAIRMAN SMITHERMAN: I think this is  
19 included within our language.

20 MR. SYMANK: I'll add a little bit more.  
21 I visited with them on more than one occasion. There's  
22 also a concern about a water well that's up right by  
23 I-10.

24 CHAIRMAN SMITHERMAN: Okay.

25 MR. SYMANK: The line will have to be

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1 moved back off of the freeway some distance anyway, so I  
2 believe we have the ability to work with them here.

3 COMM. ANDERSON: Okay.

4 CHAIRMAN SMITHERMAN: Okay. Let's move on  
5 to the west. The next one that I had was the Mudge  
6 segment modification, which is Page 65 of 95. This does  
7 not look like something I would support. It looks  
8 pretty radical. Crossing over the freeway --

9 COMM. NELSON: Right.

10 CHAIRMAN SMITHERMAN: -- then going some  
11 distance west, then crossing back over. This is more  
12 than a minor modification.

13 COMM. NELSON: I agree.

14 COMM. ANDERSON: What's the cost  
15 differential? I'm trying to think --

16 COMM. NELSON: We also don't know if it's  
17 also on his property.

18 CHAIRMAN SMITHERMAN: Right. 1.6 million.  
19 And we don't know if it's on his property.

20 COMM. ANDERSON: Well, I'd be okay with it  
21 as long as it's on his property. If it's not, that's  
22 a -- I'm -- I see maybe some people in the audience  
23 shaking their head that it is on their property.

24 MR. NEIMAN: He was the gentleman that had  
25 the pacemaker.

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1 MR. SYMANK: Yes. He spoke last week.  
2 And as I recall, he does own both sides of the freeway  
3 here.

4 COMM. NELSON: So it would be about a  
5 million point six additional?

6 MR. SYMANK: Yes.

7 COMM. ANDERSON: A 300 million-dollar  
8 line, that's -- that's a rounding error.

9 CHAIRMAN SMITHERMAN: Let me see where it  
10 is on the map. Y7b.

11 MR. RODRIGUEZ: Commissioner?

12 CHAIRMAN SMITHERMAN: Yes.

13 MR. RODRIGUEZ: It is crossing I-10 twice.  
14 Other than that...

15 CHAIRMAN SMITHERMAN: Yeah, you've got the  
16 river on the south side.

17 COMM. ANDERSON: Let me ask this question.  
18 Is his residence -- as I recall, where is -- do you know  
19 where the -- where his residence is? I mean, if this is  
20 purely cosmetic, it's one thing. If it's a --

21 MR. NEIMAN: His home is 200 feet from the  
22 back of the right-of-way --

23 CHAIRMAN SMITHERMAN: You need to --

24 COMM. NELSON: So he'd be 700 feet from  
25 the transmission line?

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1 MR. NEIMAN: My name is Bill Neiman, and  
2 I'll give you a brief synopsis of this gentleman.

3 He is one of those fluke intervenors who  
4 supported Clear View. He came last week and he made  
5 comments. And his home was built in 1891. He was the  
6 one that was there before the interstate.

7 COMM. NELSON: Uh-huh.

8 MR. NEIMAN: And he also has a health  
9 issue with a pacemaker. And his cardiologist had  
10 advised him that he can't live underneath that, and so  
11 he didn't want to be driven out of the home that they've  
12 had for over a hundred years. He does live in that  
13 home.

14 COMM. ANDERSON: Is there a way to route  
15 it -- route it further to the north to push it away so  
16 it doesn't have to cross I-10?

17 MR. NEIMAN: I can't answer that.

18 COMM. ANDERSON: No, I know. I'm asking  
19 LCRA. I'm sorry. I wasn't...

20 MR. NEIMAN: And I don't want to interject  
21 or be out of place.

22 COMM. ANDERSON: Well, I mean, again, this  
23 is -- if somebody has a demonstrable health issue and it  
24 could be moved -- I don't know how large his property  
25 is.

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1 MR. NEIMAN: It's pretty large. He owns  
2 both sides of the highway.

3 COMM. ANDERSON: But, you know, there's  
4 ways to -- it may be a whole lot easier and cheaper to  
5 move north than south across the interstate.

6 MR. SYMANK: In looking at the exhibit  
7 I've got, which is the same one y'all are looking at, I  
8 see what appears to be terrain; but without the contour  
9 data, it's difficult to assess. We can take a look at  
10 it in more detail. It was evaluated as crossing the  
11 freeway and crossing back.

12 CHAIRMAN SMITHERMAN: Crossing back over.

13 MR. SYMANK: With the assertion from him  
14 that it was either his property or his -- the neighbor's  
15 agreed.

16 CHAIRMAN SMITHERMAN: So I hate to ask  
17 this question, but what issues are associated with TxDOT  
18 and crossing over the freeway and then crossing back?

19 MR. SYMANK: In this situation, none.

20 CHAIRMAN SMITHERMAN: None? Okay.

21 MR. SYMANK: We wouldn't be using their  
22 right-of-way. We would simply cross and then parallel  
23 and cross back.

24 CHAIRMAN SMITHERMAN: All right. I think  
25 I would prefer to try to stick with our minor deviations

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1 so long as it's headed generally in the direction of the  
2 substation language here and ask you -- and ask you-all  
3 to try to work with this landowner.

4 If indeed he's got large tracts on both  
5 sides of the freeway, after you get out there, you may  
6 conclude this is actually a better idea, but I'm  
7 reluctant to hardwire it in.

8 MR. RODRIGUEZ: Okay. I appreciate that.  
9 I think this is one of those situations where we can  
10 work with Mr. Mudge under your language.

11 COMM. NELSON: And I agree with Ken that  
12 if there is a health issue that requires this, obviously  
13 nobody here on this panel wants to make Mr. Mudge move  
14 out of his house.

15 CHAIRMAN SMITHERMAN: Though, let's be  
16 clear -- I mean, we've gone over this before. There's  
17 really no proven evidence that living close to these  
18 lines causes health effects. I want to --

19 COMM. ANDERSON: Well, except that's  
20 there's -- there is an electron -- I mean, this is not  
21 a -- I agree with you with a normal person. There's a  
22 medical device involved here.

23 COMM. NELSON: Yeah. I guess I'm not  
24 willing to override the recommendation of his  
25 cardiologist.



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1 (Laughter)

2 COMM. ANDERSON: There's also -- I don't  
3 know if this -- if this house is an historic structure,  
4 but the last thing you want is the Texas Historical  
5 Commission riding down on top of you. That's a pain in  
6 the...

7 COMM. NELSON: Neck.

8 COMM. ANDERSON: Which I think LCRA has  
9 probably had plenty of run-ins in with that crowd.

10 CHAIRMAN SMITHERMAN: The last one that I  
11 had was the Runge modification. This was Page 73 of 95.  
12 I think Runge 3, just east of the McCamey substation on  
13 b14a. Looks like the Runges wanted to try to follow a  
14 property line more than just cutting across the middle.

15 COMM. ANDERSON: Yeah, I'm fine with both  
16 those changes -- with the -- with the suggested  
17 modification, assuming it doesn't involve -- I notice up  
18 at the north -- I guess it would be northwest corner  
19 of -- that as long as it doesn't, you know, cross  
20 another person's land kind of without their consent  
21 because it appears here it parallels -- I don't know if  
22 that's property lines or a highway, but...

23 MR. JOURNEAY: So are you talking about  
24 hard-wiring this or just letting it go through the minor  
25 deviation?

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1 CHAIRMAN SMITHERMAN: I think our minor  
2 deviation language.

3 COMM. ANDERSON: Well, if LCRA will, on  
4 the record, you know, state that they believe that's...

5 MR. RODRIGUEZ: Yes, Commissioner, I think  
6 that is within the minor deviation language -- excuse  
7 me -- that we can work with and we can work with the  
8 Runiges on that.

9 COMM. ANDERSON: Okay.

10 CHAIRMAN SMITHERMAN: That's the last one  
11 I think I had. Did you-all have anything else?

12 COMM. NELSON: Well, I have my memo when  
13 you're ready.

14 CHAIRMAN SMITHERMAN: Right.

15 COMM. ANDERSON: Have we -- where is B90?  
16 Oh, that's -- she dropped that. Does not want -- I  
17 think we're not going there. I'm just...

18 CHAIRMAN SMITHERMAN: Double-checking?  
19 Brad?

20 COMM. ANDERSON: I'm double-checking my --

21 CHAIRMAN SMITHERMAN: Brad, did we miss  
22 something?

23 MR. BAYLIFF: Thank you, Mr. Chairman.  
24 Brad Bayliff for Clear View Alliance and Ms. Savage.

25 She did -- when she was here, she was

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1 upset, obviously did request that you withdraw the part  
2 of her modification request that would have put it on  
3 the west and southern boundaries of her property. Her  
4 original request had requested monopoles as well.

5 She's willing and prefers it to be on the  
6 north part and the east part of her property as is now  
7 scheduled, but she would like to maintain the request  
8 for monopoles on those two parts of her property. She  
9 has roughly a square mile, and it's on the north county  
10 road and on the very top part of Road 1674 that goes to  
11 Fort McKavett.

12 COMM. ANDERSON: The total distance is  
13 approximately what?

14 MR. BAYLIFF: Would be probably two miles.  
15 She has, I think, a section.

16 CHAIRMAN SMITHERMAN: Brad, I mentioned  
17 earlier that she was in the unique situation of at least  
18 earlier appearing to have two pieces of property that  
19 were going to be affected. I think you gave me the head  
20 nod that now with our route sticking to I-10 that her  
21 more urban property is not affected. Is that correct?

22 MR. BAYLIFF: Yes, sir.

23 CHAIRMAN SMITHERMAN: Okay. Which is  
24 on --

25 MR. RODRIGUEZ: B23.

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1 CHAIRMAN SMITHERMAN: B23. So -- I  
2 remember her vividly.

3 COMM. ANDERSON: Yeah. And these are the  
4 kind of requests I think LCRA could grant on its own  
5 under the ordering paragraph, but I'm fine with it.

6 COMM. NELSON: Because it's a short  
7 distance, I'm fine with it.

8 COMM. ANDERSON: It's a short distance.

9 CHAIRMAN SMITHERMAN: And she does have  
10 the unique situation of having it now on --

11 COMM. NELSON: Two sides.

12 CHAIRMAN SMITHERMAN: -- two sides --

13 COMM. NELSON: Right.

14 CHAIRMAN SMITHERMAN: -- of her property.  
15 So I'm fine with that.

16 COMM. NELSON: That's the reason I would  
17 do it --

18 CHAIRMAN SMITHERMAN: Yeah.

19 COMM. NELSON: -- just because she is so  
20 affected.

21 CHAIRMAN SMITHERMAN: And she showed up  
22 and begged.

23 (Laughter)

24 CHAIRMAN SMITHERMAN: Her words, not mine.

25 MR. BAYLIFF: Yes, sir. And one other

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1 intervenor, Ward Whitworth, was here last week, and  
2 we've received a text reminding us that he had asked  
3 that you consider monopoles along I-10 as it approaches  
4 Junction from the west instead of going up to the north  
5 where he had property. There were also sections along  
6 Y9 where he had requested that you consider monopolizing  
7 as you went into Junction from the west.

8 CHAIRMAN SMITHERMAN: I think I'd stick  
9 with the language that we already agreed to with regard  
10 to Junction.

11 COMM. NELSON: Right.

12 COMM. ANDERSON: Well, and we're going  
13 to -- I think Junction falls also within the paragraph  
14 that's going to be drawn up about -- I mean, I think the  
15 PFD recommends monopoles through the cities. I don't  
16 know if Junction has any -- and I -- we agreed, I think,  
17 with respect to the extraterritorial jurisdiction of  
18 Kerrville. I don't know if Junction has any  
19 extraterritorial jurisdiction.

20 Assuming it's in place as of today and not  
21 the order date, I'm fine with that too. I mean, you  
22 know as you approach the more populated areas, the PFD  
23 recommends monopolizing, which I think we all support. At  
24 least I do.

25 MR. RODRIGUEZ: Commissioner, are you

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1 saying that if Junction does have an ETJ, that we should  
2 monopole the ETJ?

3 COMM. ANDERSON: Well, you know, I'd like  
4 to -- it would be nice if they had shown up and be able  
5 to tell -- I think -- certainly, anywhere from the city  
6 limits, but I think within -- I mean, at some point,  
7 you've got to transition anyway when you do it, so --

8 MR. RODRIGUEZ: And I think we could work  
9 with Junction. I think that would fall into the  
10 category of what I mentioned earlier, which is the use  
11 of additional flexibility. So in those instances  
12 where --

13 COMM. ANDERSON: Yes.

14 MR. RODRIGUEZ: -- we could work with  
15 Junction.

16 COMM. ANDERSON: But it's 300,000,  
17 roughly, a mile to, so that's at the top end. So  
18 it's -- I don't know if it's a half mile. What I would  
19 be, perhaps, a little concerned about if it were -- if  
20 they were as aggressive as, say, the City of Austin or  
21 some -- or some places where the ETJ goes out --

22 CHAIRMAN SMITHERMAN: Why don't --

23 COMM. ANDERSON: -- 50, 60, 70 miles.

24 CHAIRMAN SMITHERMAN: Why don't we do  
25 this. Kerrville was a mile either side. Why don't we

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1 limit that to a mile either side for Junction?

2 COMM. ANDERSON: That's fine.

3 MR. BAYLIFF: Thank you.

4 Ms. Schooley, on Link b84, is on the LCRA  
5 list. She was being bisected. And I believe it's  
6 Attachment 13, Supplement 1, Page 75 of 93. And I don't  
7 think I've heard you address that request.

8 CHAIRMAN SMITHERMAN: What link?

9 MR. BAYLIFF: B84. I saw that you've done  
10 up to 14a for the Runge and didn't know if you are  
11 still considering the b84 request of Miss (inaudible).

12 COMM. ANDERSON: I'm sorry. Where?

13 MR. BAYLIFF: B84. It's the AC Ranches'  
14 link, one of those two links.

15 COMM. ANDERSON: Oh.

16 MR. BAYLIFF: And this was bisecting  
17 through her property in a diagonal.

18 COMM. ANDERSON: Yeah, I see.

19 MR. BAYLIFF: -- manner.

20 MR. RODRIGUEZ: We have that as being  
21 supported by the Commissioners.

22 MR. BAYLIFF: Okay. And LCRA's data shows  
23 that it was supported. I just didn't know if that was  
24 confirmed.

25 COMM. ANDERSON: What's the distance?

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1 MR. BAYLIFF: One quarter of a mile.

2 COMM. ANDERSON: Oh.

3 COMM. NELSON: I think that fits into the  
4 minor deviation.

5 COMM. ANDERSON: Yeah, that's --

6 MR. BAYLIFF: Thank you very much.

7 COMM. ANDERSON: I agree.

8 COMM. NELSON: Mr. Chairman, are you ready  
9 for me --

10 CHAIRMAN SMITHERMAN: Yes, ma'am.

11 COMM. NELSON: -- to go over my memo?

12 CHAIRMAN SMITHERMAN: Yes, ma'am. Yes.

13 COMM. NELSON: Okay. I'm going to start  
14 with LCRA has two complaints about my memo. None of  
15 this should come as a surprise to you in the memo.  
16 It's -- it makes it consistent with previous borders and  
17 this moves some of the findings into ordering  
18 paragraphs. So I'm going to start with the second one  
19 because the second one appears on -- that's LCRA's --  
20 appears on approximately the bottom half of the second  
21 page of my memo.

22 And I've proposed changing the language.  
23 There's -- it says, "LCRA TSC shall implement erosion  
24 control measures as appropriate. LCRA shall return each  
25 affected landowner's property to its original contours



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1 and grades, unless otherwise agreed to by the landowner  
2 or landowner representatives." And there was language,  
3 as we got the order, that said, "except to the extent  
4 necessary to establish appropriate right-of-way,  
5 structure sites, setup sites, and access for the  
6 transmission line."

7 That, to me, just took away the whole  
8 obligation to return the property to its original  
9 character. So LCRA said because of the terrain, it will  
10 be impossible to return some areas to their original  
11 terrain without affecting the working of the  
12 transmission line. And that's my paraphrasing.

13 So my question to y'all would be:  
14 Assuming that I'm not comfortable with the language that  
15 was there initially, which is why I filed the memo --

16 COMM. ANDERSON: Uh-huh.

17 COMM. NELSON: -- you said your preference  
18 is to return to the original language, which I'm not  
19 comfortable with, do you have any other proposal?

20 COMM. ANDERSON: Which -- Donna, I can't  
21 find that ordering paragraph. Is it page --

22 COMM. NELSON: It's --

23 CHAIRMAN SMITHERMAN: No. 11, is that it?

24 MR. JOURNEAY: Yes, No. 11. On the second  
25 page.

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1 COMM. ANDERSON: Oh, okay. I see it.

2 COMM. NELSON: Yeah. So if you look, Ken,  
3 it's like --

4 COMM. ANDERSON: Yeah, I see.

5 COMM. NELSON: "Except to the extent  
6 necessary" really takes away the requirement because it  
7 leaves the control entirely within LCRA's...

8 CHAIRMAN SMITHERMAN: Well, what have we  
9 done in all of our previous orders on this?

10 COMM. NELSON: This is consistent, the  
11 changes.

12 MR. JOURNEAY: This is consistent --

13 CHAIRMAN SMITHERMAN: Newer proposed  
14 changes?

15 COMM. NELSON: Yes.

16 MR. JOURNEAY: -- with -- except for the  
17 one that LCRA points out, to not to Salado.

18 MR. RODRIGUEZ: Clear Springs.

19 MR. JOURNEAY: The one down that went  
20 south.

21 MR. RODRIGUEZ: Cagnon to Kendall is where  
22 we gained some experience, and then we got the  
23 language --

24 COMM. NELSON: Changed.

25 MR. RODRIGUEZ: -- that we want changed in

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1 Clear Springs to Hutto.

2 MR. JOURNEAY: Now, I mean, they say that  
3 they need this to ensure safety and stability, and it  
4 might be that you could -- we could put in a "except  
5 where necessary" to --

6 COMM. NELSON: "To ensure safety and  
7 stability."

8 MR. JOURNEAY: "Ensure safety and  
9 stability of" --

10 MR. RODRIGUEZ: "Except where the safety  
11 and stability of the line is at question," something  
12 like that.

13 COMM. NELSON: Okay.

14 MR. RODRIGUEZ: And that's only our --  
15 that our problem is, if we have to recontour to  
16 stabilize the tower or the --

17 COMM. NELSON: I understand what you're  
18 saying. And can you just work with Stephen --

19 MR. RODRIGUEZ: You bet.

20 COMM. NELSON: -- when we like -- maybe  
21 we'll get this all done before lunch. But if we don't,  
22 there seems like there were a couple of other changes  
23 that needed to be made, too.

24 COMM. ANDERSON: Well, there's the  
25 whatever ordering paragraph that LCRA wants on

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1 flexibility.

2 COMM. NELSON: Right.

3 COMM. ANDERSON: And they're going to -- I  
4 think they're going to work with staff during the lunch.

5 MR. RODRIGUEZ: Yes.

6 COMM. NELSON: And then the second issue,  
7 if y'all are willing to make some compromise on that,  
8 which I see you are, I'm okay with taking out those  
9 ordering paragraphs six and seven. They say that  
10 they're redundant, but they also say they create a  
11 conflict. And I'll be honest with you, those issues are  
12 not so important that I'm willing to die on that hill.

13 CHAIRMAN SMITHERMAN: So you would --

14 COMM. NELSON: I would just delete six and  
15 seven on my memo.

16 CHAIRMAN SMITHERMAN: -- delete your --  
17 Okay. That's the first --

18 COMM. NELSON: Those are the --

19 CHAIRMAN SMITHERMAN: -- full paragraph of  
20 Page No. --

21 COMM. NELSON: On my second page.

22 CHAIRMAN SMITHERMAN: On your second page.

23 COMM. NELSON: Right.

24 CHAIRMAN SMITHERMAN: Yeah.

25 MR. JOURNEAY: Well, if they're required

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1 to get a permit from Fish and Wildlife, it's under  
2 federal law, and we don't really need to address that.

3 COMM. NELSON: That's what I'm saying,  
4 yeah.

5 CHAIRMAN SMITHERMAN: Okay.

6 COMM. NELSON: And if it's going to cause  
7 a problem, I don't -- it's -- the language is still in  
8 the order, so it's just not in the ordering paragraph  
9 itself. So --

10 MR. RODRIGUEZ: And we appreciate that  
11 very much. We simply didn't want a potential conflict  
12 where we have an order or a permit from Fish and  
13 Wildlife that could conceivably be construed as being  
14 contrary to an order.

15 COMM. NELSON: Right. I understand.

16 MR. RODRIGUEZ: You're welcome.

17 COMM. NELSON: So I'm willing.

18 MR. RODRIGUEZ: Thank you.

19 COMM. NELSON: You won on that issue.

20 MR. RODRIGUEZ: Thank you.

21 COMM. NELSON: As the Chairman always  
22 said, it's time to stop now.

23 (Laughter)

24 CHAIRMAN SMITHERMAN: Stop talking.

25 COMM. NELSON: That's right.

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1                   That's it from my memo. I'm happy to  
2 explain anything else in the memo, but I think it's all  
3 pretty obvious.

4                   COMM. ANDERSON: I'm fine with those  
5 changes to your memo, and would include it.

6                   COMM. NELSON: So I guess -- Mr. Chairman,  
7 I guess, then, we could -- we just need to wait until  
8 after staff and LCRA work out the rest of the issues,  
9 and then we'll --

10                  COMM. ANDERSON: I do have one issue. I'd  
11 like an ordering paragraph added that directs LCRA to  
12 work with TxDOT to try to use as much right-of-way as is  
13 possible, and I'm offering my services to assist in that  
14 endeavor --

15                  COMM. NELSON: Okay.

16                  COMM. ANDERSON: -- once the -- once this  
17 order becomes final and I'm no longer subject to the ex  
18 parte rule.

19                         (Laughter)

20                  COMM. NELSON: And, Ken, I'd be happy to  
21 help you, too.

22                  COMM. ANDERSON: That's -- I think we all  
23 have the same -- because I did go back into the evidence  
24 and looked at the TxDOT, and they do have the  
25 flexibility to grant all manner of exceptions. They

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1 are -- the staff doesn't appear necessarily eager to do  
2 it, but I think -- and we may ultimately be  
3 unsuccessful, but it's worth the effort.

4 CHAIRMAN SMITHERMAN: I think it's --

5 COMM. ANDERSON: And that will  
6 particularly help, I think, in constrained areas.

7 CHAIRMAN SMITHERMAN: Absolutely worth the  
8 effort, and I think it's probably consistent with some  
9 of the dialogue that's going on down at the Legislature  
10 right now, is agencies need to work together and save  
11 money for themselves and for the ratepayers. So let's  
12 come up with something there, and not all three of us  
13 call Chairwoman Delisi at the same time.

14 (Laughter)

15 CHAIRMAN SMITHERMAN: Anything else?

16 MR. JOURNEAY: Yes, sir.

17 CHAIRMAN SMITHERMAN: Yes, yeah.

18 MR. JOURNEAY: On Commissioner Nelson's  
19 memo and based upon discussion we've had today, ordering  
20 Paragraph No. 12, on the second page.

21 And my question, whether or not this  
22 ordering paragraphs works where you have to, perhaps,  
23 transverse public right-of-way to get -- where a  
24 person's property is divided by a public road and  
25 there's public right-of-way, so your -- so there is the

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1 State of Texas as a landowner there that I don't know  
2 whether we want to actually worry about getting their  
3 permission on here. And I hear that crossing this, we  
4 may not need to because we may not actually be  
5 entering -- needing to put poles on there, but we would  
6 be crossing public property there. Maybe we want to  
7 think about --

8 COMM. NELSON: I think our preference was  
9 to try to go north in that --

10 MR. JOURNEAY: I know your preference --

11 COMM. NELSON: -- one situation.

12 MR. JOURNEAY: -- was to do that. But you  
13 also talked about if that wasn't, in fact, the best way  
14 to go, to leaving that other option open, I thought.  
15 Maybe I'm wrong.

16 CHAIRMAN SMITHERMAN: So which language,  
17 Steve, do you think is potentially problematic?

18 MR. JOURNEAY: Well, it says --

19 COMM. ANDERSON: Are we saying other than  
20 TxDOT in there?

21 (Laughter)

22 MR. JOURNEAY: Only to affect only those  
23 landowners that agreed to the minor deviation, perhaps  
24 put in there "excluding" -- "excluding public  
25 rights-of-way," or --



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1                   COMM. ANDERSON:   Okay.   I'm fine with  
2   that.

3                   MR. JOURNEAY:   -- something like that.

4                   COMM. ANDERSON:   Just put in public  
5   rights-of-way.

6                   MR. JOURNEAY:   If you give me a chance  
7   to --

8                   CHAIRMAN SMITHERMAN:   Okay.

9                   COMM. ANDERSON:   Okay.

10                  MR. JOURNEAY:   I think on Ordering  
11   Paragraph 13, you know, I think what -- as we talked  
12   about this additional flexibility, I'd also -- to put  
13   language in there to incorporate what the judge said on  
14   Page 25 of the PFD --

15                  COMM. NELSON:   Okay.

16                  MR. JOURNEAY:   -- to capture that; also,  
17   the concept of the working with the landowners and  
18   municipalities on monopoles probably needs to be put  
19   into this.

20                  And, I guess, maybe we -- I don't know if  
21   we do this one or another ordering paragraph right here  
22   that hard cores the monopolizing through municipalities  
23   and ETJs, or the one mile, as in Junction's case.   I  
24   think those are --

25                  CHAIRMAN SMITHERMAN:   That's the case --

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1     yeah, that's the case for both Junction and Kerrville.

2                   MR. JOURNEAY:   Well, I think those things  
3     we need to probably work on.

4                   CHAIRMAN SMITHERMAN:   I think we need to  
5     write language on that.

6                   COMM. NELSON:   Right.

7                   COMM. ANDERSON:   Yeah.

8                   MR. JOURNEAY:   Yes.

9                   COMM. ANDERSON:   I agree.

10                  MR. JOURNEAY:   And then one ordering  
11     paragraph that we haven't talked about, and that's going  
12     to be to accomplish getting south -- further south.  
13     What looks like y'all's choice is -- now is Route 63.  
14     Removing the underground piece of that and going -- so  
15     we need to get -- I mean, to make sure, and I think  
16     y'all are all there, but we're going to need to get an  
17     ordering paragraph, I think, to hardwire that into the  
18     order --

19                  COMM. NELSON:   Right.

20                  MR. JOURNEAY:   -- and not just leave it  
21     flexibility.

22                  COMM. ANDERSON:   Can you get with LCRA  
23     over lunch --

24                  MR. JOURNEAY:   Yes, sir.

25                  COMM. ANDERSON:   -- and come up with that?

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1 MR. JOURNEAY: Yes, sir, we'll bring  
2 something back afterwards.

3 And then -- and I'm giving you the  
4 language, perhaps, on the highway department that --

5 COMM. ANDERSON: Yeah.

6 MR. JOURNEAY: -- I've talked with  
7 Commissioner Anderson on already.

8 COMM. NELSON: Okay.

9 MR. RODRIGUEZ: And, Commissioners, if I  
10 might, we didn't want to presume, but in the event you  
11 were going in this direction, we did take the occasion  
12 to prepare some findings of fact that would alter the  
13 ones that are in the proposed order. And we'd be glad  
14 to share those with Mr. Journey for whatever value he  
15 may derive from those.

16 CHAIRMAN SMITHERMAN: Okay. So just to  
17 review before we -- we're going to break for lunch and  
18 then we're going to take up CenterPoint when we get  
19 back, and then at the end of the day, we'll take a final  
20 vote on this. But I think the route that we're all  
21 coalesced on is essentially MK63. Is that correct?

22 MR. JOURNEAY: That's my understanding.

23 COMM. NELSON: As modified by the LCRA  
24 letter.

25 CHAIRMAN SMITHERMAN: And our --

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1 MR. JOURNEAY: Modified route.

2 CHAIRMAN SMITHERMAN: And our discussion.

3 COMM. NELSON: So it's modified Route 63.

4 CHAIRMAN SMITHERMAN: Right.

5 COMM. NELSON: Yeah.

6 CHAIRMAN SMITHERMAN: Right. So it  
7 follows I-10 the entire way from the Comfort substation  
8 all the way past Junction.

9 COMM. NELSON: Right.

10 CHAIRMAN SMITHERMAN: And then goes north  
11 on 1674 and follows that route --

12 COMM. NELSON: Yes.

13 CHAIRMAN SMITHERMAN: -- on b84.

14 COMM. NELSON: So it probably parallels  
15 I-10 three quarters of the way.

16 CHAIRMAN SMITHERMAN: Okay. All right.  
17 Because there may be some people who don't want to stay  
18 around for the CenterPoint discussion.

19 So with that, let's break for lunch for an  
20 hour. We'll come back at 1:00. We'll take up the  
21 CenterPoint case. Then we'll vote on this at the end of  
22 the day.

23 (Lunch recess: 12:00 p.m. to 1:04 p.m.)

24

25

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## 1 AGENDA ITEM NO. 13 (CONTINUED)

2 DOCKET NO. 38354; SOAH DOCKET NO.  
3 473-10-5546 - APPLICATION OF LCRA TRANSMISSION  
4 SERVICES CORPORATION TO AMEND ITS CERTIFICATE  
5 OF CONVENIENCE AND NECESSITY FOR THE PROPOSED  
6 MCCAMEY D TO KENDALL TO GILLESPIE 345-KV CREZ  
7 TRANSMISSION LINE IN SCHLEICHER, SUTTON,  
8 MENARD, KIMBLE, MASON, GILLESPIE, KERR, AND  
9 KENDALL COUNTIES

10 CHAIRMAN SMITHERMAN: All right. Now,  
11 let's go back to Docket 38354. Right? 38354?

12 COMM. NELSON: That's correct.

13 CHAIRMAN SMITHERMAN: When we broke, we  
14 were going to send the parties off to draft up some  
15 language to better capture the concepts that we had  
16 discussed, and I think parties have done that. We have  
17 in front of us copies of some proposed language.

18 COMM. ANDERSON: Mr. Chairman, before we  
19 get into that, there was -- I had -- my staff had gone  
20 back and looked at -- I think we captured most of the  
21 individual requests, either explicitly or with LCRA  
22 acknowledging that our existing ordering paragraphs give  
23 them a sufficient leeway.

24 There was one landowner who showed up. I  
25 believe he's an intervenor or did -- a Ms. McGowan,  
rather upset, lives on Link b84 and had two requests.  
One that obvious -- monopoles, and the other that the  
line follow an existing pipeline on her property, I

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1 believe.

2 CHAIRMAN SMITHERMAN: What segment is she  
3 on?

4 COMM. ANDERSON: B84. I think it's over  
5 by the AC Ranches.

6 CHAIRMAN SMITHERMAN: Yes. Okay.

7 COMM. ANDERSON: I believe LCRA is looking  
8 up her tract.

9 MR. BAYLIFF: Ms. McGowan is here if you  
10 had any questions.

11 MS. MCGOWAN: I'm here.

12 COMM. ANDERSON: Oh, okay. I'm sorry.

13 MS. MCGOWAN: That's okay.

14 COMM. ANDERSON: Did I correctly --

15 MS. MCGOWAN: It was -- yes, I think so.

16 COMM. ANDERSON: -- state your request?

17 MS. MCGOWAN: Yes, sir.

18 COMM. ANDERSON: If it were to --

19 MS. MCGOWAN: I would like to change the  
20 one about following the pipelines now. We've  
21 reconsidered, and the angle might be better that was  
22 originally picked --

23 COMM. ANDERSON: So you --

24 MS. MCGOWAN: -- the lines showed.

25 COMM. ANDERSON: So now you would prefer

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1 the LCRA's route across the property as opposed to the  
2 pipeline? Is that what you're saying?

3 MS. MCGOWAN: If -- yeah, if that's what  
4 we're doing, yes.

5 COMM. ANDERSON: Okay. Well, then, that  
6 doesn't require any --

7 COMM. NELSON: Action.

8 COMM. ANDERSON: -- any action. What's  
9 the length of the monopoles across your property?

10 MS. MCGOWAN: I'm not sure.

11 COMM. ANDERSON: Roughly.

12 MS. MCGOWAN: I think we estimated.

13 COMM. ANDERSON: The issue being whether  
14 we need to specifically address it or whether it's  
15 already covered in our monopole ordering paragraph. I'm  
16 just trying to get a sense.

17 MR. SYMANK: Rough scaling, it appears to  
18 be about 14,000 feet. The segment in question.

19 COMM. ANDERSON: So a little under three  
20 miles?

21 MR. SYMANK: The portion of her property  
22 in question.

23 Does that look about right?

24 MS. MCGOWAN: Yes.

25 COMM. ANDERSON: So a little under three

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1 miles? So it would be, at the top end, 900,000, perhaps  
2 less, depending on the topography.

3 MR. SYMANK: Right. It's straight. No  
4 angle or dead ends the way it appears on --

5 COMM. ANDERSON: It'll be --

6 MR. SYMANK: -- this map, so it'll be in  
7 the 300.

8 COMM. ANDERSON: It'll be more likely to  
9 be, in the low end, 200,000?

10 MR. SYMANK: Probably in the three because  
11 of the terrain out here.

12 COMM. ANDERSON: So it is -- that's the  
13 question, how -- what the topography is.

14 MR. SYMANK: Right.

15 COMM. ANDERSON: That -- I'm inclined to  
16 think that's covered by our monopole -- our general  
17 monopole language.

18 CHAIRMAN SMITHERMAN: Let me just -- Ken,  
19 I've got the map right here because I'm -- because  
20 they're all kind of running together now.

21 Ma'am, your property is bcl4c? Is that  
22 right? Anyone confirm that?

23 MS. ANDREWS: No, she's not, no.

24 MS. MCGOWAN: Where is it, Janet? B14c?  
25 I know it's the MK15, north of...



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1 MR. HUFFMAN: I can tell you exactly.

2 MR. ROSS: Do you want to go over to the  
3 map and look at it? Go up there and look at it.

4 (Simultaneous discussion)

5 MS. MCGOWAN: Sorry. Just give me a  
6 minute.

7 CHAIRMAN SMITHERMAN: Is it down here? Is  
8 this it? I guess this is the pipeline.

9 MS. MCGOWAN: I'm across here.

10 MR. HUFFMAN: She starts right here where  
11 it comes off Donna Schooley's and -- this total thing is  
12 all yours, possibly some more over here, but this is the  
13 pipeline you're talking about.

14 MS. MCGOWAN: Yeah.

15 CHAIRMAN SMITHERMAN: So you have multiple  
16 tracts?

17 MS. MCGOWAN: Yes.

18 CHAIRMAN SMITHERMAN: This one?

19 MS. MCGOWAN: Uh-huh.

20 CHAIRMAN SMITHERMAN: This?

21 MS. MCGOWAN: Yes, and this.

22 CHAIRMAN SMITHERMAN: And that?

23 MS. MCGOWAN: Yes.

24 COMM. ANDERSON: But you no longer want  
25 the pipeline?

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1 MS. MCGOWAN: Right. Yes, sir.

2 MR. HUFFMAN: Well, it's at an angle.

3 It -- I don't think would be --

4 MS. MCGOWAN: No, because that would come  
5 more down this center. I thought it was going to come  
6 more this way, and it goes that way.

7 CHAIRMAN SMITHERMAN: Y'all speak up in  
8 that mic.

9 So what's the proposal? I'm sorry. We're  
10 looking at the map. What's the proposal?

11 COMM. ANDERSON: Well, I -- and I --

12 MS. MCGOWAN: For monopoles.

13 COMM. ANDERSON: I'd like to, I mean,  
14 visit with LCRA about this, but it's a little less than  
15 three miles. I think it's covered -- the request -- and  
16 the pipeline is no longer in the picture, so it's -- the  
17 request would be simply monopoles, and I think that's --  
18 that would be covered by the regular paragraph, which  
19 you're permitted to use monopoles under various, you  
20 know -- for example, one of them is, the right-of-way  
21 could disproportionately affect a particular landowner  
22 or the cost of the -- because it does look like it's  
23 cutting diagonally across the property. So it is -- I  
24 think that disproportionately affects the landowner, in  
25 my mind.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 MR. RODRIGUEZ: Yeah. I think we would  
2 agree with that, Commissioner.

3 CHAIRMAN SMITHERMAN: Well, is that a  
4 preferred solution, or is trying to run it closer to  
5 property lines preferred solution?

6 MR. RODRIGUEZ: If I understood correctly,  
7 we were back to the original solution, which was cutting  
8 diagonally across the property. Right?

9 MS. MCGOWAN: Yes.

10 MR. RODRIGUEZ: Okay.

11 CHAIRMAN SMITHERMAN: Okay.

12 MR. RODRIGUEZ: So I think we're just down  
13 to the question of monopoles --

14 MS. MCGOWAN: Yes.

15 MR. RODRIGUEZ: -- on the original  
16 alignment across your property.

17 MS. MCGOWAN: Correct.

18 MR. RODRIGUEZ: And I think we'd be fine  
19 with that. I agree with you that --

20 CHAIRMAN SMITHERMAN: I think we should do  
21 it.

22 COMM. NELSON: Yeah, I agree.

23 CHAIRMAN SMITHERMAN: Listen, it's not in  
24 our rules, but showing up is important.

25 COMM. ANDERSON: I'm in -- the answer is,

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 I'm in favor of monopolizing it, but the question is  
2 whether we need a particular ordering paragraph. I  
3 don't think so. I think you have all three of us  
4 agreeing that it -- that that's -- this is the  
5 appropriate situation.

6 COMM. NELSON: And it's not just because  
7 she showed up, in my opinion. The property owners who  
8 have the lines cut diagonally through the party are the  
9 most adversely affected, so I think it is appropriate  
10 given that.

11 MS. MCGOWAN: Thank you.

12 COMM. ANDERSON: I agree.

13 MS. MCGOWAN: Thank you.

14 CHAIRMAN SMITHERMAN: You're welcome.

15 COMM. ANDERSON: Okay.

16 COMM. NELSON: And I know this has been a  
17 hard case for a lot of people, and it's been emotional;  
18 but I, as one of the three of us and I think I -- the  
19 other two feel the same way, we appreciate everybody  
20 showing up and participating in the process. It makes  
21 it a lot -- although it's painful at times, we end up  
22 with a better end result.

23 COMM. ANDERSON: Ferdie, I have a  
24 question. We -- there's some draft language before us  
25 of ordering paragraphs.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 MR. RODRIGUEZ: Yes, sir.

2 COMM. ANDERSON: But I want to -- I go  
3 back to you had asked in your -- well, on a number of  
4 occasions for maximum flexibility, and I assumed there  
5 was some proposed ordering paragraph that you wanted  
6 included. I don't see it here.

7 MR. JOURNEAY: The reason you don't is  
8 because in our discussions, they indicated that that  
9 maximum flexibility was really in the areas of Kerrville  
10 and...

11 COMM. ANDERSON: And they have that. So  
12 they're -- you're -- I guess the question -- I want on  
13 the record that you're comfortable -- I'm not trying to  
14 pin you down, but I don't want -- because if there's  
15 something we need to do, this is your -- this is the  
16 bite at the apple.

17 MR. RODRIGUEZ: No, I appreciate that very  
18 much. And first of all, thank you to Katherine and  
19 Stephen for helping us work through the language. I  
20 think Stephen portrayed it exactly correctly.

21 We're talking really about the area  
22 through Junction and the area through Kerrville, and I  
23 think this will get us there. We have two little  
24 suggestions, but I think this will get us there.

25 COMM. ANDERSON: Okay.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 MR. RODRIGUEZ: And I appreciate all of  
2 their work, as well, over lunch.

3 MR. JOURNEAY: And, Mr. Chairman, to just  
4 run through this list real quick, there's a couple items  
5 that are bolded. First one in Ordering Paragraph 2. I  
6 actually think we -- you told us not to do this, but my  
7 memory --

8 COMM. ANDERSON: I think we told you to.

9 COMM. NELSON: We told you to do it.

10 MR. JOURNEAY: Okay. Well, my memory is  
11 sorry, then, and I'm lucky I got it right.

12 (Laughter)

13 MR. JOURNEAY: On Paragraph 4, the last  
14 sentence there, we talked about an issue where the  
15 municipality and the landowner see things differently  
16 and trying to say that the landowners' views trump on  
17 their property, but y'all didn't really discuss that  
18 part of it and...

19 COMM. ANDERSON: In the what-it's-worth  
20 department, I'm fine with that.

21 CHAIRMAN SMITHERMAN: Well, this  
22 specifically goes to the issue of the city limits and  
23 the ETJ.

24 COMM. ANDERSON: Uh-huh.

25 COMM. NELSON: Right.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 CHAIRMAN SMITHERMAN: Right.

2 MR. JOURNEAY: This only applies within  
3 that.

4 CHAIRMAN SMITHERMAN: Right.

5 COMM. NELSON: I agree with that language.

6 MR. JOURNEAY: And then on Paragraph  
7 No. 6, the last sentence, we didn't talk about this  
8 either. The language I had originally given to  
9 Commissioner Anderson and provided y'all earlier had  
10 this date that basically said if they don't have an  
11 agreement by this date, that there's -- they should  
12 start with their construction process. I don't know how  
13 y'all feel about that, as far as the concept of a  
14 particular date, whether you want to make it less  
15 flexible, more flexible.

16 COMM. ANDERSON: Well, I -- at some point,  
17 they've got to move forward. My view on this, they've  
18 got to move forward. We can't have endless back and  
19 forth. I think this date is sufficiently long, that it  
20 doesn't delay LCRA, but it gives all of us some time to  
21 work the issue.

22 MR. JOURNEAY: All right. We also have  
23 two findings of fact here that we identify these as  
24 particular findings we think we need to have y'all  
25 address specifically here on what we're doing. The rest

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 of the findings that we're going to need to modify to  
2 reflect the appropriate link, I think we can do that  
3 with just the discussion we have.

4 COMM. NELSON: And I do think this 115 --  
5 modification to Finding of Fact 115 is necessary --

6 CHAIRMAN SMITHERMAN: It looks good.

7 COMM. NELSON: -- based on our decision.

8 CHAIRMAN SMITHERMAN: Right.

9 MR. JOURNEAY: And finally I'll tell you  
10 that on order -- on the Paragraph No. 1 here, we focused  
11 only the modification at the airport. We recognize that  
12 y'all also want to modify the link -- or the route down  
13 in the southeast corner by Comfort, near the substation.  
14 We can modify this language to incorporate that. We  
15 were most worried about this particular area to get  
16 y'all's approval on.

17 CHAIRMAN SMITHERMAN: Well, I think the  
18 record reflects our discussion on that as well.

19 COMM. NELSON: Yes.

20 CHAIRMAN SMITHERMAN: We went in to that  
21 in great detail.

22 MR. JOURNEAY: Yes, sir.

23 COMM. NELSON: And thanks to LCRA. Thank  
24 you for so quickly responding to my request that y'all  
25 look south of -- or whatever north of -- you know what



## PUC OPEN MEETING - ITEM 13 1/20/2011

1 I'm saying.

2 MR. RODRIGUEZ: Yes.

3 COMM. NELSON: And I appreciate it because  
4 it gave us more options today.

5 MR. RODRIGUEZ: Thank you. I appreciate  
6 it.

7 CHAIRMAN SMITHERMAN: It really did. It  
8 made a difference.

9 MR. ROSS: Chairman, Commissioners, on  
10 order in Paragraph 4 -- Joe Will Ross on behalf of  
11 Junction Hotel Partners -- I'm a little concerned that  
12 in -- I guess it's the fourth line all the way over to  
13 the end where it says L -- or that fourth line, "LCRA  
14 TSC shall work with both the cities of Junction and  
15 Kerrville and affected landowners."

16 Under the definition of directly affected  
17 landowners, my family, even though we received notice  
18 and we participated in this and my client, we don't fit  
19 that definition. We're here, and that's what -- like I  
20 said earlier was, can we put in -- and I think Ferdie  
21 and I've talked about it -- maybe just adding in there  
22 where our western neighbor, who was not an intervenor,  
23 may want to post order modification to move the line  
24 east all the way next to the property line which is less  
25 than a hundred feet from our motel.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1                   COMM. NELSON: That -- this just says: On  
2 the material and type of structure used as well as the  
3 spacing and height of structure. So it doesn't  
4 reference moving the line.

5                   COMM. ANDERSON: We have another paragraph  
6 that deals with --

7                   MR. ROSS: I understand.

8                   COMM. ANDERSON: -- deviations.

9                   MR. ROSS: I understand that. And even  
10 with -- still with type and material structure, we're  
11 still kind of -- in a broad sense, we're left off the  
12 table. And I've talked with Ferdie, and he seems to be  
13 agreeable to add just Junction Hotel Partners, LP, right  
14 after Kerrville. Not that we're trying to --

15                   COMM. ANDERSON: Well, I --

16                   MR. ROSS: -- be obstructionists or --

17                   COMM. ANDERSON: That seems limiting to  
18 me.

19                   COMM. NELSON: Yeah.

20                   CHAIRMAN SMITHERMAN: That makes me  
21 uncomfortable.

22                   COMM. ANDERSON: That seems limiting.

23                   MR. ROSS: I mean, I just --

24                   COMM. NELSON: So are you saying you're  
25 not an affected landowner?

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 MR. ROSS: Under the definition, under  
2 the -- your rules, we are not a directly-affected  
3 landowner. We got notice, but we're not directly  
4 affected.

5 COMM. ANDERSON: Because it doesn't cross  
6 your --

7 MR. ROSS: It doesn't cross us and it's  
8 not --

9 COMM. ANDERSON: As it's currently  
10 configured, it doesn't cross your property.

11 COMM. NELSON: Does not pass within 500  
12 feet.

13 MR. ROSS: Y10b does not pass within  
14 500 feet of our habitable structures, but if it moves --  
15 if the landowner to our west, who is nonintervenor,  
16 decides to have -- well, move it over, LCRA --

17 COMM. ANDERSON: But my -- but if it does,  
18 then you become affected --

19 COMM. NELSON: Then you become affected.

20 COMM. ANDERSON: -- affected landowner.

21 MR. ROSS: True.

22 MR. JOURNEYAY: So this language doesn't  
23 use directly affected, it only uses affected.

24 COMM. ANDERSON: Affected.

25 COMM. NELSON: Right.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1                   COMM. ANDERSON: The other is that the  
2 deviations requires the consent of all the landowners  
3 affected, as I recall.

4                   COMM. NELSON: It's our belief that  
5 you're -- you fall within this language.

6                   MR. ROSS: Okay. Okay.

7                   COMM. ANDERSON: Particularly because  
8 you've got to read this in connection with the other  
9 ordering paragraphs.

10                  MR. ROSS: Yes, sir, I understand. I  
11 just -- we're -- we've participated. And we're in a  
12 very strange situation, and it's --

13                  COMM. ANDERSON: I understand. I just  
14 think that -- I mean, if LCRA, under our other ordering  
15 paragraphs, if they moved it to the property line and,  
16 therefore, put you within a hundred feet of the  
17 centerline, they wouldn't be able to do that without  
18 your consent.

19                  MR. ROSS: Okay. Thank you.

20                  MS. CRUMP: Commissioners, Georgia Crump  
21 representing Kerrville. I just had one comment.

22                         I very much appreciate your including this  
23 language in Ordering Paragraph No. 4. My concern with  
24 the last sentence is wanting to avoid kind of a  
25 patchwork or polka dot appearance as the line goes down

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 the interstate through Kerrville. If each property  
2 owner has picked their preference to a different type of  
3 pole, a weathered pole, then a concrete pole or a steel  
4 pole, that will have an appearance, I think, down the  
5 interstate that will be less than desirable.

6 COMM. ANDERSON: Or a striped pole.

7 MS. CRUMP: A striped --

8 (Laughter)

9 MS. CRUMP: And, you know, what I see  
10 happening is being a very collaborative process, that  
11 the city will call in LCRA and the property owners, and  
12 they'll all sit down and talk about it. But I don't --  
13 I'm wondering about if the last sentence is needed or if  
14 we could give some consideration to the -- you know, the  
15 overall appearance and the need to maintain some  
16 uniformity of appearance.

17 CHAIRMAN SMITHERMAN: Where did that last  
18 sentence come from?

19 MR. JOURNEAY: I'm sorry, sir, I put it in  
20 there.

21 CHAIRMAN SMITHERMAN: That's yours.

22 (Laughter)

23 COMM. ANDERSON: You know, I'm -- the  
24 reason I'm fine with that is that when -- and I think  
25 I -- and I don't know what else -- I won't speak for

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 LCRA, but if I were them, I'd want some -- there -- if  
2 they're caught between two parties, which one trumps?  
3 And I'm -- and I understand your concern. I guess my  
4 personal view is, this Commissioner, is that if in a  
5 dispute between the city and the -- an individual  
6 landowner, I -- you know, I sort of side with the  
7 landowner. But that's my personal -- that's my personal  
8 vote on this.

9 COMM. NELSON: Well, and the other thing  
10 is, these landowners, many of whom have participated in  
11 this process, not your specific landowners, but  
12 landowners in general, they care as much about the Hill  
13 Country as Kerrville does. So I -- it's hard to imagine  
14 that they would want all different structures on their  
15 property because they want to keep it --

16 MS. CRUMP: Right. They want to make it  
17 look good, too.

18 COMM. NELSON: I understand.

19 CHAIRMAN SMITHERMAN: Well, I -- you know,  
20 I don't think this prevents the city from trying to get  
21 everybody together and trying to come up with a master  
22 plan. But if push comes to shove, I agree with my  
23 colleagues, I think the landowner right is predominant  
24 here.

25 MS. CRUMP: Okay.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 CHAIRMAN SMITHERMAN: I'm okay with it.  
2 Anything else?

3 COMM. ANDERSON: Did you -- this is for  
4 LCRA. Did I hear you say you had some language tweaks?

5 MR. RODRIGUEZ: Oh, no, I think we took  
6 care of all of that.

7 COMM. ANDERSON: Oh, okay. I'm sorry. I  
8 misunderstood, then.

9 MR. RODRIGUEZ: No, we're done.

10 CHAIRMAN SMITHERMAN: Brad, I'm trying to  
11 get to a motion.

12 (Laughter)

13 MR. BAYLIFF: Thank you, Mr. Chairman. We  
14 appreciate your language on the restoration to the  
15 original contours. We brought that issue up in our  
16 original brief, and we're very much in agreement with  
17 the language that's here.

18 CHAIRMAN SMITHERMAN: Thank you.

19 All right. So let me -- help me style  
20 this. I think Chair will entertain a motion to approve  
21 Route MK63 as modified pursuant to our discussion today,  
22 your memo, the changes that we have discussed for the  
23 ordering paragraphs and the findings of fact, and  
24 delegate to staff the ability to make nonsubstantive  
25 changes.

## PUC OPEN MEETING - ITEM 13 1/20/2011

1 COMM. NELSON: So move.

2 CHAIRMAN SMITHERMAN: Anything else?

3 COMM. NELSON: Nope. So move. Stephen's  
4 looking like he --

5 MR. JOURNEYAY: No.

6 CHAIRMAN SMITHERMAN: You want more?

7 MR. JOURNEYAY: I was just being -- an anal  
8 attorney here. I'll let y'all get on with it.

9 CHAIRMAN SMITHERMAN: Okay.

10 COMM. NELSON: Okay..

11 (Laughter)

12 COMM. ANDERSON: Nothing wrong with that.  
13 We resemble that remark.

14 UNIDENTIFIED PERSON: I know the  
15 transcript --

16 CHAIRMAN SMITHERMAN: At least the second  
17 part.

18 (Laughter)

19 CHAIRMAN SMITHERMAN: We have a motion.

20 COMM. ANDERSON: Oh, second.

21 CHAIRMAN SMITHERMAN: Second, affirm.

22 Thank you all very much.

23 MR. RODRIGUEZ: Thank you, Commissioners.

24 MR. JOURNEYAY: We will endeavor to get you  
25 an order early Monday, I think.



## PUC OPEN MEETING - ITEM 13 1/20/2011

1 (Simultaneous discussion)

2 CHAIRMAN SMITHERMAN: Okay. In all our  
3 excitement, I forgot to adjourn the meeting. This  
4 meeting of the Public Utility Commission of Texas is  
5 hereby adjourned.

6 (Proceedings concluded at 2:46 p.m.)

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## PUC OPEN MEETING - ITEM 13 1/20/2011

## C E R T I F I C A T E

STATE OF TEXAS )

COUNTY OF TRAVIS )

We, William Beardmore and Lorrie A. Schnoor, Certified Shorthand Reporters in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

WE FURTHER CERTIFY THAT the proceedings of such were reported by us or under our supervision, later reduced to typewritten form under our supervision and control and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 21st day of January 2011.

Digitally signed by William C. Beardmore  
Date: 2011.04.29 13:22:57 -07:00  
Reason: Transcript prepared by W.C.B.  
Location: Austin, TX

*William C. Beardmore*  
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## PUC OPEN MEETING - ITEM 13 1/20/2011

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## COMMUNITY VALUES CHART

<b>Location and Date of Open House</b>	<b>Attendees' Preferences For Maximizing Distance of Transmission Line From Residences</b>
San Angelo 2009	67% - Second priority (EA p. 6-5)
Christoval 2009	73% - First priority (EA p. 6-8)
Harper 2009	76% - First priority (EA p. 6-12)
Comfort 2009	78% - Third priority (EA p. 6-15)
Kerrville 2009	71% - Second priority (EA p. 6-17)
Lampasas 2009	58% - Second priority (EA p. 6-19)
Burnet 2009	55% - Fifth priority (EA p. 6-21)
Llano 2009	55% - Second priority (EA p. 6-23)
Fredericksburg 2009	67% - First priority (EA p. 6-26)
Comfort 2009	71% - Second priority (EA p. 6-29)
Questionnaires from People Not Attending an Open House 2009	72%- First priority (EA p. 6-32)
Junction 2010	69% - First priority (EA p. 6-38)
Menard 2010	73% - Second priority (EA p. 6-41)
Mason 2010	59% - Fifth priority (EA p. 6-43)
Fredericksburg 2010	77% - First priority (EA p. 6-6-46)
Eldorado 2010	58% - Fifth priority (EA p. 6-49)
Kerrville 2010	81% - First priority (EA p. 6-52)
Sonora 2010	71% - Fourth priority (EA p. 6-54)
Questionnaires from People Not Attending an Open House 2010	57% - Sixth priority (EA p. 6-57)

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

SEP 27 AM 10:31

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

**CITY OF JUNCTION'S  
STATEMENT OF POSITION**

COMES NOW Intervenor, City of Junction, and files its Statement of Position.

City of Junction makes the following Statements of Position in this proceeding:

1. The City of Junction opposes the placement of the CREZ lines within or adjacent to the Interstate 10 Corridor located within or adjacent to the City of Junction's boundaries (Section Y10b) because of its potential negative impact to the City of Junction. Accordingly, The City of Junction recommends that no CREZ lines be placed along the Interstate 10 Corridor.
2. The City of Junction urges the PUC to consider the negative impact on property values, aesthetics, tourism and economic development to

the City of Junction if the CREZ line is adjacent to the Interstate 10 Corridor.

In support thereof:

- The City of Junction would show that, currently, at least 70% of the City's sales tax revenue is produced by the business activity on the City's portion of the Interstate 10 Corridor. A portion of this revenue goes directly to Junction's Economic Development Corporation for economic development projects. Additionally, The hotel/motel industry along Junction's portion of Interstate 10 is a significant producer of tax revenue for the City of Junction.
- The City of Junction would show that it has invested a great amount of resources in sewer and water infrastructure along the Interstate 10 Corridor in order to support future economic development.
- The City of Junction would further show that the area between RR 1674 and Interstate 10 (parcel Y9-015), which is in the direct path of Section Y10b, is very ripe for economic development and is a primary targeted area within the City of Junction's future economic development plans. Additionally, parcel Y11-016 has been identified by the City of Junction for potential future economic development.

In the alternative:

3. The City of Junction urges that to the extent the CREZ lines are built within or adjacent to the City of Junction, as an alternative to lattice structures, the lines use short concrete monopoles in order to lessen the required width of the easements.

4. The City of Junction urges that to the extent the CREZ lines are built within or adjacent to the City of Junction a northern route bypassing the city be chosen.

WHEREFORE, PREMISES CONSIDERED, the City of Junction respectfully request that all relief requested herein be granted by the PUC, together with all other relief to which the City of Junction may be entitled.

Respectfully submitted,



**Melanie Spratt-Anderson**  
**ATTORNEY FOR CITY OF JUNCTION**  
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#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document is being served pursuant to SOAH Order Nos. 1 and 2 on this 24<sup>th</sup> day of September.



Melanie Spratt-Anderson