PUC DOCKET NO. 38494
SOAH DOCKET NO. 473-10-5924

APPLICATION OF ELECTRIC TRANSMISSION TEXAS, LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE TESLA TO RILEY 345-KV CREZ TRANSMISSION LINE IN CHILDRESS, HARDEMAN, AND WILBARGER COUNTIES	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER

This Order approves the application of Electric Transmission Texas, LLC (ETT) to amend its Certificate of Convenience and Necessity (CCN) Nos. 30193 and 30194 for construction, ownership, and operation of a double-circuit 345-kV competitive-renewable-energy-zone (CREZ) transmission line and associated facilities within Childress, Hardeman, and Wilbarger Counties. ETT, Commission Staff, all other parties in this docket, and non-party landowner Robert W. Sherman filed a unanimous stipulation and agreement that resolves all issues in this proceeding, and no party opposes ETT's CCN request consistent with the stipulation. This docket was processed in accordance with applicable statutes and Commission rules. ETT's application, consistent with the stipulation, is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History and Background

1. On August 18, 2010, ETT filed an application to amend its CCN to build, own, and operate a new 345-kV double-circuit CREZ transmission line in Childress, Hardeman, and Wilbarger Counties (project).

2. The application met the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3).

3. ETT submitted the application in compliance with the orders in Docket Nos. 37902[1] and 36802[2] assigning ETT responsibility for the project.

4. The application included a total of 17 routes for consideration, one preferred route, and 16 alternatives, designated as routes 1 through 17.

5. All of the routes presented in the application as well as the links of which they consist were shown in Table 2-1, which included all 17 routes evaluated by PBS&J (ETT's environmental consultant), and on figures 2-3a and 2-3b included in attachment 4 to the application, which is titled "Environmental Assessment and Alternative Route Analysis for the Proposed Electric Transmission Texas, LLC Tesla to Riley 345-kV CREZ Transmission Line Project; Childress, Cottle, Hardeman, and Wilbarger, Texas" (EA).

6. On August 18, 2010, ETT sent written notice of the application by first class mail to each landowner of record (as determined by current county tax roll information) that would be directly affected as defined by P.U.C. PROC. R. 22.52.

7. On August 18, 2010, ETT sent notice to municipal and governmental officials in Childress, Hardeman, and Wilbarger Counties, and to electric utilities providing service within five miles of the proposed facility.

8. On August 18, 2010, ETT filed an affidavit indicating that a copy of the EA was sent to the Texas Parks and Wildlife Department (TPWD).

9. On August 20, 2010, the Commission issued the order of referral and preliminary order, referring this proceeding to the State Office of Administrative Hearings (SOAH) to conduct a hearing and prepare a proposal for decision, and establishing lists of issues to be addressed and issues not to be addressed in this proceeding.

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[1] *Remand of Docket No. 35665 (Commission Staff's Petition for the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones)*, Docket No. 37902, Order on Remand (Mar. 30, 2010).

[2] *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones*, Docket No. 36802, Order (Apr. 5, 2010).

10. On August 27, 2010, the SOAH ALJ filed Order No. 1, establishing the intervention deadline of September 17, 2010; establishing notice requirements; requiring Commission Staff to comment on the sufficiency of the application and proposed notice; outlining filing, service, and discovery procedures; establishing a September 1, 2010, deadline for asserting deficiencies in the application; cautioning interested parties that any proposed route or combination of properly noticed proposed routes could be selected; advising that any party who does not file written testimony or a position statement will be dismissed from the proceeding; requiring ETT to provide proof of notice; and providing notice of a prehearing conference to be held on September 30, 2010.

11. ETT published notice of the application on August 27, 2010 in the *Childress Index*, the *Quanah Tribune-Chief* and the *Vernon Daily Record*, which are newspapers of general circulation in Childress, Hardeman and Wilbarger Counties.

12. Notice of the application was published in the *Texas Register* on September 3, 2010.

13. On September 1, 2010, in response to Order No. 1, Commission Staff recommended that the application be found sufficient.

14. On September 8, 2010, ETT filed affidavits and proof of notice.

15. On September 10, 2010, in response to Order No. 1, Commission Staff recommended that ETT's proof of notice be found sufficient and compliant with the notice provisions in P.U.C. PROC. R. 22.52(a) and Order No. 1.

16. On September 13, 2010, the SOAH ALJ filed Order No. 2, which deemed the application sufficient and materially complete; provided notice of a prehearing conference to be held on September 30, 2010; and provided information concerning accessing documents on the Commission's interchange *via* the internet.

17. On September 20, 2010, the SOAH ALJ filed Order No. 3, which granted ETT's motion for entry of protective order.

18. On September 22, 2010, the SOAH ALJ filed Order No. 4, which provided additional notice of the prehearing conference to be held on September 30, 2010, provided information concerning accessing documents on the Commission's interchange, and included an overview of the hearing process for this case.

19. On September 27, 2010, the Commission issued a supplemental preliminary order in this case.

20. On September 30, 2010, a prehearing conference was held in this proceeding.

21. On October 4, 2010, the SOAH ALJ filed Order No. 5, which memorialized the prehearing conference; established a procedural schedule; gave notice of a prehearing conference to be held on November 9, 2010 and the hearing on the merits to be held on November 10-12, 2010; established procedures for evidence, exhibits, and service of pleadings; and granted the interventions of Rodney Foster, Jeanne Marie Moffett, Dan Mike Bird, Grady Stowe, Edwin Johnson, Larry Kieschnick, Gene Bristo, the Henry Family, Southwestern Public Service Company, and the WT Waggoner Estate.

22. On October 13, 2010, Larry Kieschnick and the Henry family filed direct testimony and TPWD filed a letter containing recommendations and informational comments relating to the project.

23. On October 19, 2010, the W.T. Waggoner Estate filed direct testimony and Southwestern Public Service Company filed a statement of position.

24. On October 20, 2010, Dan Mike Bird filed a statement of position.

25. On October 22, 2010, the SOAH ALJ filed Order No. 6, which dismissed intervenors Rodney Foster, Jeanne Marie Moffett, Grady Stowe, Edwin Johnson, and Gene Bristo from the case for failure to file direct testimony or a statement of position.

26. On October 29, 2010, Commission Staff filed the direct testimony of Kevin Mathis. Mr. Mathis addressed the issues identified in the Commission's preliminary orders and recommended approval of ETT's preferred route 17.

27. On November 3, 2010, ETT filed supplemental testimony of Claude E. Smith and Rob R. Reid addressing the recommendations and comments of the TPWD.

28. On November 3, 2010, Grady Stowe filed a motion to be reinstated as a party and a statement of position.

29. On November 5, 2010, the SOAH ALJ filed Order No. 7, granting Mr. Stowe's motion and reinstating him as a party to this proceeding.

30. On November 9, 2010, Dan Mike Bird withdrew his intervention in this proceeding.

31. On November 9, 2010, a prehearing conference was held at which the parties announced that they were in the process of completing a unanimous stipulation.

32. On November 10, 2010, ETT, Commission Staff, the other parties, and non-party landowner Robert W. Sherman filed a stipulation and motion to approve, urging that the transmission line be routed on preferred route 17, as described in the application, with the modification to link YY reflected in the map attached to the stipulation as attachment A.

33. At the hearing held on November 10, 2010, the following material was admitted into evidence without objection:

    a. ETT's application filed on August 18, 2010, including the environmental assessment and the direct testimony of Claude E. Smith, Rob R. Reid, Paul Hassink and Stan A. Krause;

    b. ETT's affidavits/proofs of notice filed on September 8, 2010;

    c. The direct testimony of Larry Kieschnick and of Robert H. Henry filed on October 13, 2010, and the direct testimony of J. Todd Thomas filed on October 19, 2010;

    d. The direct testimony of Commission Staff witness Kevin Mathis filed on October 29, 2010;

e. The stipulation, including the map attached as attachment A showing the agreed modification to link YY; and

f. The supplemental testimony of ETT witnesses Claude E. Smith and Rob R. Reid filed on November 3, 2010.

34. At the November 10, 2010 hearing, the ETT also presented oral testimony of Claude E. Smith in support of the modified preferred route contained in the stipulation.

35. On November 15, 2010, ETT filed a proposed order to implement the stipulation.

36. On November 18, 2010, the SOAH ALJ filed Order No. 8, which dismissed the case from the SOAH docket and remanded the case to the Commission.

Description of the Transmission Project

37. The project will be approximately 64 miles long and will connect the proposed ETT Tesla switching station, located in southeast Childress County, to the proposed ETT Riley switching station, located in central Wilbarger County.

38. The project is a Competitive Renewable Energy Zone (CREZ) project.

39. The expected in-service date of the project is June 2013.

40. The project will use steel single-pole structures designed to support two circuits with two 1590 ACSS conductors per phase.

41. Landowners attending the public meetings overwhelmingly preferred the selection of single-pole structures to a lattice structure design.

42. Another factor in the selection of single-pole structures was the compressed construction schedule and the importance of completing the project expeditiously.

43. In connection with a similar 345-kV single-pole, double-circuit-capable transmission line recently completed by ETT, Power Engineers, Inc. evaluated historically used double-circuit, steel single-pole and lattice structure designs and concluded that there was only a nominal difference in cost between the two structure types.

44. The design of the project will meet or exceed the requirements for construction as defined in the National Electrical Safety Code (NESC). Since the NESC is a safety code and not a design guide, additional design criteria will be used, including the American National Standards Institute (ANSI) standards, ETT's standard practices, and such practices as required by federal, state, and local governments and agencies.

45. The right-of-way (ROW) width will be 150 feet, and the average structure height will be approximately 140 feet.

46. ETT's investment will be financed with short-term borrowings and owner equity.

47. Completion of the project will accomplish the intended result for the CREZ project designated as the "Panhandle BB to Oklaunion double-circuit 345-kV line (One circuit looping into Tesla 345-kV bus) *[Tesla to Oklaunion portion as depicted in the CTO Study, scenario 4]*" in the CREZ transmission plan ordered by the Commission in Docket Nos. 36802 and 37902, as modified by ERCOT to terminate both circuits into Tesla Station.

Description of the Stipulation

48. The stipulation recommends approval of preferred route 17 (consisting of links A-B-K-M-P-HH1-HH2-LL-SS-TT-VV-YY-III-QQQ-SSS-UUU1-UUU2 as presented in ETT's application), with the modification to link YY reflected on the map attached to the stipulation as attachment A.

49. The stipulation incorporates agreements that ETT has made with individual landowners concerning minor routing adjustments and similar arrangements affecting the landowners' properties.

50. To the extent that alternative routes or facility configurations have been incorporated into the stipulation due to individual landowner preference, the affected landowners have made adequate contributions to offset any additional cost associated with the accommodations by agreeing to a route across their property. Such accommodations to landowners have not diminished the electric efficiency or reliability of the project.

51. The stipulation was signed by every party to this case.

52. The stipulation recommends approval of preferred route 17, described below, with the modification to link YY reflected on the map attached to the stipulation as attachment A.

Routing of the Proposed Project

53. ETT contracted with PBS&J to perform an environmental assessment and alternative route analysis (EA) of the proposed project area.

54. The objective of the EA was to select and evaluate several alternate transmission line routes and ultimately to recommend a preliminary preferred route to ETT that was feasible from environmental and land use standpoints.

55. PBS&J examined potential routes according to the information required in the Commission's form CCN application, as well as factors that appear in § 37.056(c)(4) of PURA[3] and the Commission's substantive rules.

56. PBS&J delineated a study area approximately 62 miles long and 14 miles wide, for total coverage of approximately 868 square miles, with numerous preliminary routes.

57. This study area and these preliminary routes were presented to the public at three open-house meetings held in the study area vicinity at Vernon on November 16 and 17 and at Quanah on November 18, 2009.

58. After the public meetings, PBS&J and ETT performed additional reviews to look at areas of concern discussed at the public meetings, met with individual landowners, evaluated the public comments, and considered revisions to the preliminary routes.

59. In response to public concerns, several links were modified, some new links were added, and others were deleted. Generally, the changes to the preliminary routes after the public meetings were made to further reduce the number of habitable structures within 500 feet

[3] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

of the centerline of a proposed route, to improve the paralleling of apparent property lines, to improve the paralleling of compatible ROW, and to reduce other potential land use impacts to ranching/farming operations.

60. Ultimately, 17 primary alternative routes were selected that were then specifically evaluated by the PBS&J staff.

61. In evaluating the alternative routes, 37 environmental and land-use criteria were considered.

62. Considering the balance of the environmental criteria, PBS&J recommended route 3 as its preferred route and the remaining routes as alternates.

63. ETT reviewed PBS&J's evaluation regarding the alternative routes and selected route 17 as the preferred route.

64. Along with the preferred route, ETT submitted 16 alternative routes with its application.

65. The application was adequate and contained an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.

66. The stipulation supports adoption of preferred route 17, with the modification to link YY reflected on the map attached to the stipulation as attachment A.

67. Specific aspects of preferred route 17, as modified by the stipulation, are addressed below under "statutory CCN factors" (environmental impact and community values, recreational and park areas, historical and aesthetic/archaeological values, and environmental integrity).

68. There are no alternative routes or facility configurations that would have a less negative impact on landowners.

69. Based on these factors and the fact that preferred route 17, as modified by the stipulation, has been unanimously agreed to among the parties to this case, modified preferred route 17 is reasonable and should be approved as the approved route.

Statutory CCN Factors

Environmental Impact and Community Values

70. The area traversed by the project is within the North-Central Plains of Texas and the land use is a mixture of cropland, rangeland and pasture. The topography within this area is nearly level to gently rolling plains. Elevation ranges between 1,171 and 1,886 feet above mean sea level. The Pease River is a prominent drainage feature through the southern portion of the study area and Lake Pauline is located southeast of Quanah about midway between the Tesla and Riley switching stations. The study area is bisected by U.S. Highway 183 through Vernon and State Highway 6 through Quanah. U.S. Highway 287 extends the length of the study area passing north of both the Tesla and the Riley stations. The Cities of Quanah, Chillicothe, and Vernon are located in the study area in addition to the communities of Kirkland, Goodlett, and Oklaunion.

71. The approved route crosses no land identified as being irrigated with traveling irrigation systems.

72. There are two private airstrips located within 10,000 feet of the proposed centerline of the approved route. There are two FAA-registered airports with at least one runway longer than 3,200 feet within 10,000 feet, Quanah Municipal Airport and Wilbarger County Airport. There are no FAA-registered airports with a runway less than 3,200 feet in length within 10,000 feet; and no heliports located within 5,000 feet of the proposed centerline of the approved route.

73. There is one commercial AM transmitter located within 10,000 feet of the proposed centerline of the approved route. Three electronic communications towers were identified within 2,000 feet of the proposed centerline of the approved route.

74. The following governmental permits or approvals will be obtained, as necessary, by ETT following approval of the CCN and prior to initiating construction:

    a. A storm water pollution prevention plan for construction will be submitted to the Texas Commission on Environmental Quality. A notice of intent will be

submitted by ETT or its contractor prior to the beginning of construction on the project.

b. If necessary, cultural resource clearance will be obtained from the Texas Historical Commission (THC) with regard to any requirements concerning cultural resources.

c. Permits will be obtained from the Texas Department of Transportation for any crossing of a state-maintained roadway prior to construction across the state-maintained roadway.

d. If necessary, ETT will coordinate with the U.S. Army Corps of Engineers regarding permit requirements for impacts to Corps jurisdictional waters of the U.S. that might result from construction of the project.

e. Depending on the location of the transmission line structures, floodplain development permits and road crossing permits might be required from the counties in which the approved route is located.

f. The General Land Office (GLO) requires a miscellaneous easement for any ROW crossing state-owned riverbed or navigable streams. Although it is unlikely that any streams on the approved route will fall into this category, ETT will coordinate with the GLO to determine whether an easement is necessary following PUC approval of the approved route.

g. If necessary, ETT will coordinate with the U.S. Fish and Wildlife Service (USFWS) regarding permit requirements associated with possible impact to endangered/threatened species.

Recreational and Park Areas

75. PBS&J identified no parks or recreational areas located within 1,000 feet of the proposed centerline of the approved route.

Historical and Aesthetic/Archaeological Values

76. There are no known recorded historical or archaeological sites crossed by the approved route or located within 1,000 feet of the approved route's centerline. If ETT or its contractor encounters any archeological artifacts or other cultural resources during construction, then construction at that location would cease, the THC would be contacted, and the ETT or its contractor would take action as directed by the THC.

77. Construction of the project could have both temporary and permanent aesthetic effects. Temporary effects would include views of the actual construction (assembly and erection of the structures) and any clearing of the ROW. Where limited clearing is required in wooded areas, the brush and wood debris could have a temporary negative impact on the local visual environment. Permanent impacts from the project would be the views of the structures and lines themselves as well as views of cleared ROW.

Environmental Integrity

78. The project will cause only short-term impacts to soil, water and ecological resources.

79. The approved route is not expected to adversely impact any known populations of federally-listed endangered wildlife species.

80. ETT's mitigation measures will serve to reduce and mitigate potential adverse effects of construction and operation of the proposed transmission line.

81. Construction of the project will have no significant impact on the physiographic or geological features/resources of the area.

82. Construction and operation of the project would have little adverse impact to the surface water resources of the area.

83. No adverse impacts to groundwater are expected to occur from the construction, operation and maintenance of the project.

84. Impacts to vegetation resulting from the project are primarily associated with the removal of existing woody vegetation within the ROW.

85. Construction of the project would not represent a significant impact to any threatened or endangered species that may occur in the study area. Consultation with USFWS would be requested should any federally listed threatened or endangered species be observed during construction.

86. Typical impacts from transmission lines on wildlife can be classified as either short-term effects resulting from physical disturbance during clearing and construction or long-term effects resulting from habitat modification or loss. The net effect on local wildlife of these two types of impacts is usually minor.

87. The project is not located within the coastal management program boundary as defined in 31 T.A.C. § 503.1.

88. ETT has conducted an adequate evaluation of potential environmental impacts of a transmission line in the project area, including the approved route.

Need for the Proposed Transmission Line

89. The project was specifically listed as a CREZ project in the Commission's final orders in Docket Nos. 36802 and 37902.

90. As a CREZ transmission project identified in Docket Nos. 36802 and 37902, the project is exempt under §§ 39.203(e) and 39.904(h) of PURA and P.U.C. SUBST. R. 25.174(d)(2) from the requirement to consider the factors in §§ 37.056(c)(1)–(3) and (4)(E) of PURA.

91. Because the project was identified in the ERCOT CREZ transmission optimization (CTO) study as a CREZ project, no alternatives to the project have been considered in this proceeding.

Goal for Renewable Energy

92. To fulfill the renewable energy goals established by the Texas Legislature in § 39.904(a) of PURA, the Commission adopted, in Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, a transmission plan to deliver renewable energy to market and, in Docket No. 37902, designated certain transmission service providers to build the required transmission facilities.

93. In Docket No. 33672, the Commission determined that the transmission facilities identified in its final order, including this project, were necessary to deliver to customers the renewable energy generated in the CREZ.

Compatible Corridors

94. The approved route uses or parallels existing compatible corridors (including apparent property boundaries) for approximately 64.8 percent of its length.

Prudent Avoidance

95. All routes proposed by ETT conform to the Commission's policy of prudent avoidance.

96. Prudent avoidance is achieved by minimizing, to the extent reasonable, the number of habitable structures located in close proximity to the routes.

97. ETT and consultant PBS&J used a constraints mapping process to identify and reduce the impact of the proposed line on various constraints including habitable structures. Open house input further reduced the impact on habitable structures.

98. ETT's proposed routes minimized, to the extent reasonable, the number of habitable structures in close proximity to the routes.

99. ETT considered and avoided population centers and other locations where people gather and live when routing all of its proposed routes for the project.

100. The approved route has 8 habitable structures located within 500 feet of its centerline.

Estimated Costs

101. The estimated cost to construct the project on the approved route is $111,763,676.

102. ETT's estimated cost for the project on the approved route is $1.73 million per mile, which is comparable to ERCOT's estimate of $1.68 million per mile in the CTO study.

103. The estimated cost of the approved route is only an estimate since the route has not yet been surveyed by ETT and final engineering design has not been performed.

Proposed Modifications to the Scope of the Work Contained in the CTO Study

104. In response to ETT's request, an ERCOT letter dated June 2, 2010, recommended the use of 1590 ACSS conductor for the project rather than 1433 ACSS/TW conductor identified in the CTO study. ERCOT concluded that the use of 1590 ACSS conductor is cost-effective and consistent with the intent of the CTO study.

105. Following completion of the CTO study, it was determined that the Oklaunion station could be not expanded sufficiently to handle the terminal equipment for the eight new CREZ circuits planned to be connected to it. As an alternative, ETT proposed to construct the new Riley station near the Oklaunion site. The Riley station will be connected to the Oklaunion station by an existing 345-kV transmission line and an additional new 345-kV circuit.

106. In a letter to ETT dated September 23, 2009, ERCOT concluded that the Riley station is not a different endpoint for the CREZ circuits, but rather an extension of the existing Oklaunion station. ERCOT found that construction of the Riley station was necessary to effect the CREZ transmission plan, and therefore cost-effective and consistent with the CTO study.

107. The ERCOT CTO study originally specified that only one of the Panhandle BB to Oklaunion circuits would terminate into the Tesla station and the other circuit would bypass Tesla and continue to Oklaunion.

108. In a letter to ETT dated August 9, 2010, ERCOT indicated that the overall capacity of the Panhandle portion of the CREZ system would be increased if both of the circuits terminate into the Tesla station. ERCOT found that the change was a cost-effective modification of the CREZ transmission plan and consistent with the intent of the CTO study.

109. The Commission's final order estimated the length of the Tesla-Riley project as 45 miles. Due to the final location of the switching stations and the difference between a straight-line estimate and actual routes that take the Commission's routing criteria into consideration, the length of the routes proposed in the application range from approximately 64.1 to 74.8 miles.

Financial Commitment

110. Pursuant to P.U.C. SUBST. R. 25.174(d), financial commitment must be demonstrated since this is a subsequent CREZ transmission line project as designated by the Commission.

111. Financial commitment for the project was satisfied in *Commission Staff's Petition for Determination of Financial Commitment for the Panhandle A and Panhandle B Competitive Renewable Energy Zones*, Docket No. 37567, Order (Jul. 30, 2010).

TPWD's Recommendations and Comments

112. TPWD provided recommendations and comments on the project in a letter dated October 11, 2010.

113. The letter primarily addressed mitigation of potential impacts to wildlife and natural resources. This Order addresses only those TPWD recommendations and comments for which there is record evidence.

114. ETT has agreed to comply with TPWD's recommendations to the extent possible, consistent with the need to complete the project in a timely and cost-effective manner.

115. Among the measures that ETT has agreed to adopt are avoiding or minimizing impact to protected aquatic species if waterways are disturbed for construction of haul roads or equipment access during construction, revegetation with native species, implementation of measures necessary to minimize impacts to whooping cranes, and compliance with the Migratory Birds Treaty Act.

116. Although TPWD's October 11, 2010 letter recommends that the Commission review and consider recommendations in previous TPWD correspondence dated January 21, 2009 and December 10, 2009, § 12.0011(c) of the Texas Parks and Wildlife Code became effective on September 1, 2009 and does not apply to the January 21, 2009, letter.

117. ETT follows many of the recommendations in TPWD's January 21, 2009 and December 10, 2009, letters relating to the use of existing row, revegetation of disturbed

areas, avoiding impacts to water resources, erosion controls, and avoiding potential impacts to endangered species.

118. TPWD's October 10, 2010 letter recommends that the Commission avoid considering the absence of data in the Texas Natural Diversity Database (TXNDD) as an indication of absence of rare/endangered species on the landscape, but utilities do not gain access to private property until after a route is approved by the Commission. As a result, ETT's application identifies known/occupied areas of endangered or threatened species habitat, based on information in the TXNDD database and other available information.

119. Once a route is approved by the Commission and ETT obtains access to the property along that route, it can undertake on-the-ground measures to identify whether there is potential endangered or threatened species habitat and respond appropriately if such habitat is identified.

120. TPWD also recommends that the Commission avoid considering the lack of data regarding floodplain location in the project area as indicating an absence of floodplains on the landscape. As in the case of identification of endangered or threatened species habitat, ETT cannot gain access to private property and must rely on publicly-available information until after a route is approved by the Commission.

121. Consistent with TPWD's recommendations, potential impacts to the whooping crane have been considered in evaluating transmission line routes in this proceeding, although pre-selection route surveys were not possible as TPWD's letter recognizes. After route selection, ETT will identify and delineate stopover sites on or immediately adjacent to the right-of-way and implement necessary measures to avoid or minimize impacts to whooping cranes. ETT will also consult with USFWS if necessary concerning proposed avoidance, minimization and mitigation measures for potential impacts of the line on whooping cranes.

122. TPWD recommends that the proposed transmission line follow existing disturbed corridors or run parallel to each other whenever possible to minimize fragmentation of

wildlife habitat. TPWD also recommends that the Commission select PBS&J's preferred route 3 rather than ETT's preferred route 17.

123. ETT's preferred route 17 reasonably balanced the variety of factors the Commission must consider in selecting transmission line routes, some of which favor the use of previously-disturbed areas (such as paralleling existing ROW and property lines) and some of which do not (such as avoiding habitable structures). ETT's preferred route also reasonably avoids the reliability concerns that would arise from crossing or paralleling two CREZ transmission lines.

124. In accordance with TPWD recommendations, after route selection ETT will survey for suitable nesting habitat for the interior least tern along the approved route and implement any necessary measures to minimize impacts to that species.

125. In response to TPWD's recommendations concerning migratory bird species within or near the project area, ETT will comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the project.

126. ETT will implement TPWD recommendations that state-listed threatened species observed during construction be allowed to leave the site or be relocated to a suitable nearby area by a permitted individual.

127. Revegetating the ROW is addressed in several different ways. The ROW may re-seed naturally, depending on the time of year and local species. At times, ETT will work with landowners to plant their preferred mix or pay them to plant the ROW, where crops or hay pastures are involved. Finally, ETT may use seed mixes recommended by TXDOT near highways or mixes such as that recommended by the National Wild Turkey Association. ETT's goal is to meet the landowners' needs for their property.

128. ETT will continue to monitor the listing status of the Texas kangaroo rat on the federal endangered species list as recommended by TPWD, and will consult with the USFWS should the kangaroo rat's listing status change and additional measures need to be taken to protect its habitat.

129. Consistent with TPWD's recommendation, ETT will evaluate measures to avoid and minimize project impacts to bats if caves or karst features are documented during ROW preparation or construction.

130. TPWD's recommendation that ETT prepare a mitigation plan with a 1:1 replacement ratio for impacted habitats could significantly increase the cost of the project. The Commission has not typically imposed such a requirement in previous transmission line CCN cases. ETT will revegetate impacted areas with native species, in accordance with ordering paragraph 8 of this order.

131. Implementation of the measures set forth in the ordering paragraphs in this order to minimize the impact of line construction on wildlife, including following certain procedures for protecting raptors, using extreme care in the application of chemical herbicides, minimizing disruption of flora and fauna, and revegetating with native species following completion of construction, combined with ETT's mitigation practices set out in the application and its testimony and with ETT's agreement to adopt TPWD's recommendations set forth in finding of fact 115, will sufficiently address the concerns expressed by TPWD in its recommendations and comments.

II. Conclusions of Law

1. ETT is an electric utility as defined in §§ 11.004 and 31.002(6) of PURA.

2. The Commission has jurisdiction over the application pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, 37.056 and 39.203(e).

3. Notice of the application was provided in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).

4. ETT's application is sufficient and ETT's notice was adequate.

5. SOAH exercised jurisdiction over this docket pursuant to PURA § 14.053 and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2010).

6. The project is necessary for the service, accommodation, convenience or safety of the public within the meaning of PURA § 37.056(a), taking into consideration the applicable factors set out in PURA § 37.056(c).

7. This application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.

8. ETT has met the requirements of P.U.C. SUBST. R. 25.101(b)(3).

9. No issue is presented by the application subject to P.U.C. SUBST. R. 25.102 (Coastal Management Program).

10. The approved route adheres to the Commission's "prudent avoidance" policy contained in P.U.C. SUBST. R. 25.101(a)(4) and (b)(3)(B)(iv).

11. The requirements for informal disposition under P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission orders the following:

1. Consistent with the stipulation, ETT's application is approved. ETT's CCN Nos. 30193 and 30194 are amended to include the construction, ownership, and operation of the project.

2. The project shall follow the approved route, which is the preferred route 17 set out in the application, with the modification to link YY reflected on the map attached to the stipulation as attachment A.

3. ETT shall implement erosion-control measures as appropriate and return the site to its original contours and grades unless otherwise agreed to by the landowners or landowners' representatives.

4. In the event ETT or its contractors encounters any artifacts or other cultural resources during project construction, ETT shall cease work immediately in the vicinity of the resource, report the discovery to the THC, and take action as directed by the THC.

5. ETT shall follow the procedures described in the following publications for protecting raptors: *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Avian Power Line Interaction Committee (APLIC), 2006 and the *Avian Protection Plan Guidelines* published by APLIC in April, 2005.

6. ETT shall identify stop-over sites on or immediately adjacent to the ROW for the whooping crane and implement necessary measures to avoid or minimize impacts by consultation with the USFWS if stop-over sites are identified.

7. ETT shall survey for suitable nesting habitat for the interior least tern along the approved route and implement any necessary measures to minimize impacts to that species.

8. ETT shall comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the project.

9. ETT shall allow state-listed threatened species observed during construction to leave the site or be relocated to a suitable nearby area by a permitted individual.

10. ETT shall continue to monitor the listing status of the Texas kangaroo rat on the federal endangered species list and will consult with the USFWS should the kangaroo rat's listing status change and additional measures need to be taken to protect its habitat.

11. ETT shall evaluate measures to avoid and minimize project impacts to bats if caves or karst features are encountered during ROW preparation or construction.

12. ETT shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.

13. ETT shall minimize the amount of flora and fauna disturbed during construction of the project, except to the extent necessary to establish appropriate ROW clearance for the transmission line. In addition, ETT shall revegetate using native species and shall

consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, ETT shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and the USFWS.

14. ETT shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.

15. ETT shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviation to the approved route shall only directly affect landowners who were sent notice of the transmission line in accordance with P.U.C. PROC. R. 22.52(a)(3) and shall directly affect only those landowners that have agreed to the minor deviation. Any agreed minor deviations shall not delay the project beyond its Commission-required completion date nor shall any minor deviation add any significant cost to the project.

16. ETT shall be permitted to deviate from the approved route in any instance in which the deviation would be more than a minor deviation, but only if the following two conditions are met. First, ETT shall receive consent from all landowners who would be affected by the deviation regardless of whether the affected landowner received notice of or participated in this proceeding. Second, the deviation shall result in a reasonably direct path towards the terminus of the line and not cause an unreasonable increase in cost or delay. Unless these two conditions are met, this paragraph does not authorize ETT to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

17. ETT is required to update the reporting of this project on its monthly construction progress report prior to the start of construction to reflect final estimated cost and schedule in accordance with P.U.C. SUBST. R. 25.83(b). In addition, ETT shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified. ETT shall file in Project No. 37858 information pursuant to P.U.C. SUBST. R. 25.216(f) and the order in Docket No. 37902.

18. Entry of this order consistent with the stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the stipulation. Neither should the entry of this order consistent with the stipulation be regarded as binding precedent as to the appropriateness of any principle underlying the stipulation.

19. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 20th day of December 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

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