

**PUC DOCKET NO. 37951  
SOAH DOCKET NO. 473-10-4105**

<b>APPLICATION OF ELECTRIC</b>	§	<b>PUBLIC UTILITY COMMISSION</b>
<b>TRANSMISSION TEXAS, LLC</b>	§	
<b>TO AMEND A CERTIFICATE OF</b>	§	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY</b>	§	
<b>FOR THE CLEAR CROSSING TO</b>	§	
<b>DERMOTT 345-KV CREZ</b>	§	
<b>TRANSMISSION LINE (FORMERLY</b>	§	
<b>CENTRAL B TO CLEAR CROSSING)</b>	§	
<b>IN HASKELL, JONES, STONEWALL,</b>	§	
<b>FISHER, KENT AND SCURRY</b>	§	
<b>COUNTIES</b>	§	

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**ORDER**

This Order addresses the application of Electric Transmission Texas, LLC (ETT or Applicant) to amend 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 Haskell, Jones, Stonewall, Fisher, Kent, and Scurry Counties. ETT, the Public Utility Commission of Texas (Commission) Staff, and all other parties in this docket filed a Unanimous Stipulation and Agreement (Stipulation) that resolves all issues in this proceeding, and no party opposes ETT's CCN request, as modified by the Stipulation. This docket was processed in accordance with applicable statutes and Commission rules. Consistent with the Stipulation, ETT's application is approved.

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

**I. Findings of Fact**

**Procedural History and Background**

1. On May 3, 2010, ETT (Applicant) filed an application (Application) to amend its CCN to allow it to build, own, and operate a new 345-kV double-circuit CREZ transmission line in Haskell, Jones, Stonewall, Fisher, Kent, and Scurry Counties (the Project).

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2. The Application met the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3).
3. The Applicant submitted the Application in compliance with the Orders in Docket Nos. 37902<sup>1</sup> and 36802<sup>2</sup> assigning it responsibility for the Project.
4. The Application included a total of 15 routes for consideration, one preferred and 14 alternatives, designated as Routes 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 18, 20, and 21.
5. All of the 15 routes presented in the Application as well as the links of which they consist were shown in Table 2-1, which included all 21 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 (ETT) Clear Crossing to Dermott 345-kV Transmission Line Project; Garza, Kent, Stonewall, Haskell, Scurry, Fisher, Jones, and Shackelford Counties, Texas" (the EA).
6. On May 3, 2010, Applicant 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 May 3, 2010, Applicant sent notice to municipal and governmental officials in Haskell, Jones, Stonewall, Fisher, Kent and Scurry Counties, and to electric utilities providing service within five miles of the proposed facility.
8. On May 3, 2010, Applicant filed an affidavit indicating that a copy of the EA was sent to the Texas Parks and Wildlife Department (TPWD).

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<sup>1</sup> *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).

<sup>2</sup> *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones*, Docket No. 36802, Order (April 5, 2010).

9. On May 5, 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 (PFD), and establishing lists of issues to be addressed and issues not to be addressed in this proceeding.
10. On May 12, 2010, the SOAH ALJ filed Order No. 1, establishing the intervention deadline of June 2, 2010, requiring Commission Staff to comment on the sufficiency of the application and proposed notice; establishing a May 17, 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; and requiring Applicant to provide proof of notice.
11. ETT published notice of the Application on May 13, 2010 in the *Rotan Advanced-Star-Record* and the *Snyder Daily News* and on May 14, 2010 in the *Stamford Star*, which are newspapers of general circulation in Haskell, Jones, Stonewall, Fisher, Kent and Scurry Counties.
12. Notice of the Application was published in the *Texas Register* on May 14, 2010.
13. On May 17, 2010, in response to Order No. 1, Commission Staff recommended that the Application be found sufficient.
14. On May 24, 2010, Applicant filed affidavits and proof of notice.
15. On May 26, 2010, in response to Order No. 1, Commission Staff recommended that Applicant'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 June 7, 2010, the SOAH ALJ filed Order No. 2, which found Applicant's notice satisfactory; deemed the Application sufficient and materially complete; granted the interventions of Cottonwood Flat, LLC, Jim Watson, Mark Holdren, Charles Rippy, Marcia French, Larry Griffin, and Eicke Ranch/Eddie Eicke; scheduled a prehearing conference; and ordered clarification of the intervention request of Charles Mongrain.
17. On June 14, 2010, a prehearing conference was held in this proceeding.
18. On June 22, 2010, the SOAH ALJ filed Order No. 4, which memorialized the prehearing conference; established a procedural schedule; gave notice of the hearing to be held on August 12, 2010; established procedures for evidence, exhibits, and service of pleadings; recognized the withdrawal of Betty Gary's intervention; conditionally denied the intervention of Mary Wilhelm; and granted the interventions of William John Bryan, Caza Ranches, Billie Coffman, Criswell, Ltd., Hackberry Creek Ranch, Ltd., Craig Hughes, Frank Kubacak, Zachary Logan, Mark Lundgren, Charles Mongrain, Harvey Mueller, Lindy Patton, Patricia Smith Riley, James Rippy, Murray Stasny, Robert (Bob) Stevenson, and Swenson Land & Cattle Co.
19. On June 24, 2010, the SOAH ALJ filed Order No. 3, which ordered that Zachary Logan and Rory Burroughs provide clarification of the basis for their intervention motions.
20. On June 29, 2010, Mary Wilhelm withdrew her request to intervene.
21. On June 30, 2010, TPWD filed a letter containing recommendations and informational comments relating to the Project.
22. On July 7, 2010, Larry Griffin filed his direct testimony and statement of position.
23. On July 8, 2010, Marcia Fuller French filed the direct testimony of Scott King and T-Diamond Ranch filed the direct testimony of W. J. Bryan.

24. On July 9, 2010, Mark Lundgren, Lindy Patton, Murray Stasny, Patricia Smith Riley, and Swenson Land and Cattle Company (Steve Swenson) filed direct testimony, and Robert L. Stevenson, Craig M. Hughes and Occidental Permian, Ltd. filed statements of position.
25. On July 12, 2010, Caza Ranches, L.L.C. filed the direct testimony of Jim Richards, and on July 14, 2010, Zachary Logan filed his direct testimony and statement of position.
26. On July 20, 2010, the SOAH ALJ filed Order No. 5, which granted interventions of Occidental Permian, Ltd., Dusty Farmer, Robert Wendel and Glen Thompson; granted additional time for late intervenors Dusty Farmer, Robert Wendel and Glen Thompson to file testimony or a statement of position; recognized Mary Wilhelm's withdrawal from the case; overruled Swenson Land and Cattle Company's objection to the direct testimony of Claude E. Smith; and dismissed intervenors Billie Coffman, Charles Mongrain, Charles Rippy, Cottonwood Flat, LLC, Eicke Ranch, Frank Kubacak, Hackberry Creek Ranch, Ltd., Harvey Mueller, James Rippy and Mark Holdren from the case for failure to file direct testimony or a statement of position.
27. On July 21, 2010, the Commission issued the Order Requesting Briefing on Threshold Legal/Policy Issues, and on July 22, 2010, the Commission issued its Supplemental Briefing Order, relating to the statutory deadline for resolving CREZ CCN cases.
28. On July 23, 2010, Commission Staff filed the Direct Testimony of Allen S. Boling, P.E. Mr. Boling recommended approval of a route he identified as Route 22, which is a combination of ETT's preferred Route 16 on the western end and alternate Route 20 on the eastern end.
29. On July 27, 2010, Robert Wendel filed his direct testimony and notice of appearance.
30. On July 28, 2010, ETT and Commission Staff filed their Briefs on Threshold Legal/Policy Issues.

31. On July 30, 2010, the SOAH ALJ filed Order No. 6, which denied reconsideration of Order No. 5 granting the late intervention of Dusty Farmer, Robert Wendel and Glen Thompson.
32. On August 2, 2010, Dusty Farmer withdrew his request to intervene.
33. On August 3, 2010, ETT filed an errata to the Application and the rebuttal testimony of Claude E. Smith and Rob R. Reid.
34. On August 4, 2010, the SOAH ALJ filed Order No. 7, which ruled on objections to certain intervenor testimony, dismissed late intervenors Dusty Farmer and Glen Thompson for failure to file testimony or a statement of position, and denied the motions of Hackberry Creek Ranch, Ltd. for extension of time to file position statement of testimony and for leave to file position statement of testimony.
35. On August 9, 2010, Applicant, Commission Staff, and the other parties filed a Unanimous Stipulation and Agreement (Stipulation) and Motion to Approve, urging that the transmission line be routed on Stipulation Route 22 as described in the Stipulation. Stipulation Route 22 is the same as Route 22 proposed by Commission Staff witness Allen S. Boling, P.E., except for certain modifications on the western end to accommodate landowner parties.
36. On August 9, 2010, Applicant also filed supplemental testimony of Claude E. Smith, Rob R. Reid and Stan A. Krause in support of the Stipulation.
37. On August 11, 2010, the SOAH ALJ filed Order No. 8, authorizing parties who wished to do so to appear by telephone at the August 11, 2010 prehearing conference.
38. At the prehearing conference held on August 11, 2010, the following material was admitted into evidence without objection:

- a. ETT's Application filed on May 3, 2010, including the Environmental Assessment and the Direct Testimony of Claude E. Smith, Rob R. Reid, and Stan A. Krause;
  - b. ETT's Affidavits/Proofs of Notice filed on May 3 and May 24, 2010;
  - c. The Stipulation, including Stipulation Exhibits 1a, 1b, 2a, and 2b, which are maps identifying Stipulation Route 22; and
  - d. The Supplemental Testimony of ETT witnesses Claude E. Smith, Rob R. Reid, and Stan A. Krause, filed in support of the Stipulation.
39. At the prehearing conference, the SOAH ALJ cancelled the hearing on the merits due to the unanimous agreement of the parties reflected in the Stipulation.
40. On August 12, 2010, the SOAH ALJ filed Order No. 9, which admitted the Stipulation and supporting documentation into evidence, dismissed the case from the SOAH docket, cancelled the hearing, remanded the case to the Commission, and denied Hackberry Creek Ranch's third request for an extension of time to file testimony.
41. On August 13, 2010, Applicant filed a proposed order to implement the Stipulation.

**Description of the Transmission Project**

42. The Project will be approximately 89.2 miles long and will connect the proposed Oncor Electric Delivery Company Dermott collection station, located northwest of the City of Snyder, to the proposed ETT Clear Crossing switching station, located northeast of the City of Stamford.
43. The Project is a Competitive Renewable Energy Zone (CREZ) project.
44. The expected in-service date of the Project is September 2013.

45. The Project will use steel single-pole structures designed to support two circuits with two 1590 ACSS conductors per phase.
46. Landowners attending the public meetings overwhelmingly preferred the selection of single-pole structures to a lattice structure design.
47. Another factor in the selection of single-pole structures was the compressed construction schedule and the importance of completing the project expeditiously.
48. 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.
49. 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, Applicant's standard practices, and such practices as required by federal, state, and local governments and agencies.
50. The right of way (ROW) width will be 150 feet, and the average structure height will be approximately 140 feet.
51. ETT's investment will be financed with short-term borrowings and owner equity.
52. Completion of the Project will accomplish the intended result for the CREZ project designated as the "Central B-to-Clear Crossing (now Clear Crossing to Dermott) Double-Circuit 345-kV CREZ Transmission Line Project" in the CREZ Transmission Plan ordered by the Commission in Docket Nos. 36802 and 37902.



**Description of the Stipulation**

53. The Stipulation recommends approval of Stipulation Route 22, which consists of a combination of links from Routes 16 and 20 presented in the Application, with specified modifications to some of these links.
54. The Stipulation incorporates agreements that Applicant has made with individual landowners concerning minor routing adjustments and similar arrangements affecting the landowners' properties.
55. 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. Several of the affected landowner parties agreed to accept additional route length across their property if it was redirected to follow property boundaries or to avoid sensitive areas. Such accommodations to landowners have not diminished the electric efficiency or reliability of the Project.
56. The Stipulation was signed by every party to this case.
57. The specific routing recommendation in the Stipulation is described below.

**Routing of the Proposed Project**

58. Applicant contracted with PBS&J to perform an Environmental Assessment and Alternative Route Analysis (EA) of the proposed project area.
59. The objective of the EA was to select and evaluate several alternate transmission line routes and ultimately to recommend a preliminary preferred route to Applicant that was feasible from environmental and land use standpoints.

60. 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 and the Commission's Substantive Rules.
61. PBS&J delineated a study area approximately 92 miles long and 20 miles wide, for total coverage of approximately 1,840 square miles, with numerous preliminary routes.
62. This study area and these preliminary routes were presented to the public at three open-house meetings held in the study area vicinity in October 2009 at Stamford on October 13; at Rotan on October 14; and at Snyder on October 15.
63. After the public meetings, PBS&J and Applicant 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.
64. In response to public concerns, some links were modified to reduce potential impacts to habitable structures and other constraints, to the greatest extent practicable. Some new links were added and others were dropped completely. Utilizing this input, the PBS&J team made final revisions to the preliminary routes and identified the primary alternative routes for further evaluation.
65. Ultimately, 21 primary alternative routes were selected that were then specifically evaluated by the PBS&J staff.
66. In evaluating the alternative routes, 37 environmental and land-use criteria were considered.
67. Considering the balance of the environmental criteria, PBS&J recommended Route 16 as the preferred route and the remaining routes as alternates.

68. Applicant reviewed PBS&J's evaluation regarding the alternative routes and agreed with PBS&J's recommendation of Route 16 as the preferred route.
69. Along with the preferred route, ETT submitted 14 alternative routes with its Application.
70. The Application was adequate and contained an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.
71. The Stipulation proposed a route (Stipulation Route 22) that combined links from Routes 16 and 20 consisting of the following links: B (as modified), P (as modified), T (as modified), DDD (as modified), Q' (as modified), V, X, X', KK, KK', VV, YY, and BBB. The Stipulation contained maps depicting Stipulation Route 22.
72. Specific aspects of Stipulation Route 22 are addressed below under "Statutory CCN Factors" (Environmental Impact and Community Values, Recreational and Park Areas, Historical and Aesthetic/Archaeological Values, and Environmental Integrity).
73. There are no alternative routes or facility configurations that would have a less negative impact on landowners.
74. Based on these factors and the fact that Stipulation Route 22 has been unanimously agreed to among the parties to this case, Stipulation Route 22 is reasonable and should be approved as the Approved Route.

**Statutory CCN Factors**

**Environmental Impact and Community Values**

75. The Project will traverse the North-Central Plains of Texas, an area of local prairies and flat to rolling plains ranging from 900 to 3,000 feet in elevation. Low, north to south trending ridges called questas typify the landscape. Lake Stamford is located in the northeast corner of the study area and the Double Mountain Fork Brazos River traverses

the central portion of the study area, in addition to smaller canyons and other drainage features and small lakes.

76. The study area has experienced a moderate to high degree of human development, including oil and gas fields, agricultural and urban development. Urban development within the study area is concentrated in and around the municipalities of Snyder, Rotan, Hamlin, and Stamford, and along Ranch Road 1211 and U.S. Highways 83, 84 and 180.
77. The Approved Route crosses no pasture or cropland irrigated by traveling irrigation systems (either rolling or center-pivot types).
78. There are 4 private airstrips located within 10,000 feet of the proposed centerline of the Approved Route. There is one FAA-registered airport with at least one runway longer than 3,200 feet within 20,000 feet; 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.
79. There is one commercial AM transmitter located within 10,000 feet of the proposed centerline of the Approved Route. There are no FM transmitters, microwave towers, or other electronic communications towers located within 2,000 feet of the proposed centerline.
80. The following governmental permits or approvals will be obtained by Applicant following approval of the CCN and prior to initiating construction:
  - A Storm Water Pollution Prevention Plan (SWPPP) for construction will be submitted to the Texas Commission on Environmental Quality (TCEQ). A Notice of Intent (NOI) will be submitted by ETT or its contractor prior to the beginning of construction on the Project.

- If necessary, cultural resource clearance will be obtained from the Texas Historical Commission (THC) with regard to any requirements concerning cultural resources.
- Permits will be obtained from the Texas Department of Transportation (TxDOT) for any crossing of a state-maintained roadway prior to construction across the state-maintained roadway.
- If necessary, ETT will coordinate with the U.S. Army Corps of Engineers (USACE) regarding permit requirements for impacts to USACE jurisdictional waters of the U.S. that might result from construction of the Project.
- 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.
- The General Land Office (GLO) requires a Miscellaneous Easement (ME) 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 ME is necessary following PUC approval of the Approved Route.
- 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**

81. 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**

82. 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 Applicant or its contractor encounters any archeological artifacts or other cultural resources during construction, then construction at that location would cease, the Texas Historical

Commission (THC) would be contacted, and the Applicant or its contractor would take action as directed by the THC.

83. 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**

84. PBS&J evaluated the impacts of the Approved Route on environmental integrity.
85. The Project will cause only short-term impacts to soil, water and ecological resources.
86. The Approved Route does not cross any known habitat of federally-listed endangered plant or animal species.
87. ETT's mitigation measures will serve to reduce and mitigate potential adverse effects of construction and operation of the proposed transmission line.
88. Construction of the Project will have no significant impact on the physiographic or geological features/resources of the area.
89. Construction and operation of the Project is expected to have little adverse impact to the surface water resources of the area.
90. No adverse impacts to groundwater are expected to occur from the construction, operation and maintenance of the Project.

91. Impacts to vegetation resulting from the Project are primarily associated with the removal of existing woody vegetation within the ROW.
92. 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 FWS would be requested should any federally listed threatened or endangered species be observed during construction.
93. 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.
94. The Project is not located within the coastal management program boundary as defined in 31 T.A.C. §503.1.
95. Applicant 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**

96. The Project was specifically listed as a CREZ project in the Commission's final orders in Docket Nos. 36802 and 37902.
97. 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.
98. 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**

99. 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.
100. 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**

101. The Approved Route uses or parallels existing compatible corridors (including apparent property boundaries) for approximately 74 percent of its length.

**Prudent Avoidance**

102. All routes proposed by ETT conform to the Commission's policy of prudent avoidance.
103. Prudent avoidance is achieved by minimizing, to the extent reasonable, the number of habitable structures located in close proximity to the routes.
104. 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.
105. ETT's proposed routes minimized, to the extent reasonable, the number of habitable structures in close proximity to the routes.
106. ETT considered and avoided population centers and other locations where people gather and live when routing all of its proposed routes for the Project.



107. The Approved Route has 12 habitable structures located within 500 feet of its centerline.

**Estimated Costs**

108. The estimated cost to construct the Project on the Approved Route is \$152,967,342.
109. ETT's estimated cost for the Project is \$1.71 million per mile, which is comparable to ERCOT's estimate of \$1.88 million per mile in the CTO Study.
110. 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**

111. In response to ETT's request, an ERCOT letter dated March 3, 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.
112. The site selected by Oncor for the Dermott collection station added approximately 14 miles to the straight-line distance of the Project specified in the CTO Study, which affects the cost estimate for the Project in comparison to the cost estimated in the CTO Study.
113. In a March 10, 2010 letter, ERCOT recommended that a switching station be constructed at the Clear Crossing location and that the Project be terminated at that station. ERCOT concluded that construction of the Clear Crossing switching station was cost-effective and consistent with the intent of the CTO Study.
114. ERCOT requested that ETT and Oncor reach agreement concerning construction and ownership of the Clear Crossing switching station. By letter dated March 30, 2010, ETT and Oncor agreed that ETT would design, own, operate and maintain the Clear Crossing switching station.

**Financial Commitment**

115. P.U.C. SUBST. R. 25.174(d)(5) establishes that there is sufficient financial commitment under PURA § 39.904(g)(3) for the McCamey, Central and Central West CREZs to grant CCNs for projects serving those CREZs.
116. The Project serves the Central CREZ.

**TPWD's Recommendations and Comments**

117. TPWD provided recommendations and comments on the Project in a letter dated June 29, 2010.
118. 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.
119. 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.
120. 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 measures to protect migratory bird species in compliance with the Migratory Birds Treaty Act.
121. Although TPWD's June 29, 2010 letter recommends that the Commission review and consider recommendations in previous TPWD correspondence dated January 21, 2009 and August 14, 2009, §§ 12.0011(c) of the Texas Parks and Wildlife Code became effective on September 1, 2009 and does not apply to the previous letters.

122. ETT follows many of the recommendations in TPWD's January 21, 2009 and August 14, 2009 letters relating to the use of existing right-of-way, revegetation of disturbed areas, avoiding impacts to water resources, erosion controls, and avoiding potential impacts to endangered species.
123. TPWD's June 29, 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.
124. 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.
125. TPWD comments that ETT's preferred route 16 would result in the eleventh longest length across upland woodland and the thirteenth longest route across riparian woodland.
126. ETT's preferred route 16 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 right-of-way and property lines) and some of which do not (such as avoiding habitable structures). Stipulation Route 22 impacts less woodland area than route 16.
127. TPWD recommends that the Commission select a route that would minimize impacts to natural resources. Stipulation Route 22 ranks well in minimizing impacts to natural resources, when considering factors such as length crossing upland woodland/brushland,

bottomland/riparian woodland/brushland, potential wetlands, and number of stream/river crossings.

128. 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 concerning possible impacts of the line on whooping cranes if stop-over sites are identified.
129. 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.
130. 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.
131. TPWD recommends that disturbed areas suitable for Texas horned lizard habitat be revegetated with native, patchy vegetation rather than sod-forming grasses. Re-vegetating the right-of-way is addressed in several different ways by ETT. The ROW may be allowed to 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 right-of-way, 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. Because the property still belongs to the landowner, ETT attempts to be responsive to the landowners' property use needs.

132. The proposed line will span all waterways, no structures will be placed in waterways, and proper erosion and sediment control measures will be implemented. If waterways are disturbed for the construction of haul roads or equipment access during construction, ETT will implement TPWD's recommended measures to avoid or minimize impact to protected aquatic species.
  
133. 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.
  
134. 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 120, 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 2008 & Supp. 2009).
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. The Application may be approved without a hearing pursuant to § 2001.056 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2008 & Supp. 2009) and P.U.C. PROC. R. 22.35.
8. This application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
9. Applicant has met the requirements of P.U.C. SUBST. R. 25.101(b)(3).
10. No issue is presented by the Application subject to P.U.C. SUBST. R. 25.102 (Coastal Management Program).
11. 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).
12. 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 issues the following order:

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 along links B (as modified), P (as modified), T (as modified), DDD (as modified), Q' (as modified), V, X, X', KK, KK', VV, YY, and BBB, as more specifically depicted on the maps attached to the Stipulation.
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.

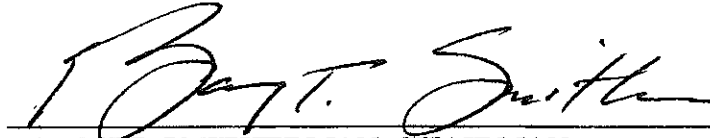
7. ETT shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.
8. ETT shall minimize the amount of flora and fauna disturbed during construction of the Project, except to the extent necessary to establish appropriate right-of-way 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.
9. ETT shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
10. 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 received 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.
11. ETT shall comply with the reporting requirements of P.U.C. SUBST. R. 25.83.
12. 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.



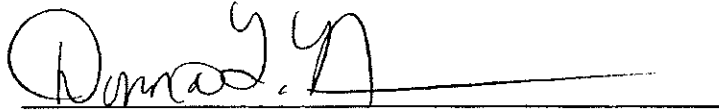
13. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 4<sup>th</sup> day of October 2010.

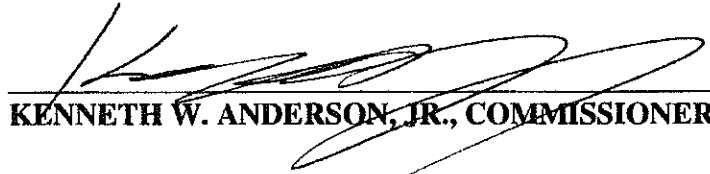
**PUBLIC UTILITY COMMISSION OF TEXAS**



**BARRY T. SMITHERMAN, CHAIRMAN**



**DONNA L. NELSON, COMMISSIONER**



**KENNETH W. ANDERSON, JR., COMMISSIONER**