

**PUC DOCKET NO. 39298  
SOAH DOCKET NO. 473-11-4816**

**APPLICATION OF SOUTH TEXAS §  
ELECTRIC COOPERATIVE, INC. TO §  
AMEND ITS CERTIFICATE OF §  
CONVENIENCE AND NECESSITY FOR §  
THE ODESSA TO NORTH MCCAMEY §  
TO BAKERSFIELD 345-KV CREZ §  
TRANSMISSION LINE IN ECTOR, §  
MIDLAND, CRANE, UPTON, §  
CROCKETT, AND PECOS COUNTIES §**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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**ORDER**

This Order addresses the application of South Texas Electric Cooperative, Inc. (STEC) to amend its certificate of convenience and necessity (CCN) for the construction of a single-circuit, double-circuit-capable 345-kV competitive-renewable-energy-zone (CREZ) transmission line within Ector, Midland, Crane, Upton, Crockett, and Pecos Counties. A unanimous stipulation and agreement (stipulation) was executed that resolves all contested issues in this proceeding. Consistent with the stipulation, STEC's application is approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law.

**I. Findings of Fact**

**Procedural History and Background**

1. STEC holds CCN No. 30146.
2. On April 18, 2011, STEC filed an application to amend its CCN to build a new single-circuit, double-circuit-capable CREZ transmission line in Ector, Midland, Crane, Upton, Crockett, and Pecos Counties (project).

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3. STEC submitted the application in compliance with orders entered in Docket Nos. 37902<sup>1</sup> and 38045<sup>2</sup> assigning it responsibility for constructing the project.
4. The application included 17 routes for construction for the Odessa-to-North McCamey segment, one preferred and 16 alternatives, designated O-NM 1 through O-NM 17, and six routes for consideration for the North McCamey-to-Bakersfield segment, one preferred and five alternatives, designated NM-B 1 through NM-B 6.
5. All of the routes presented in the application, as well as the links of which they consist, were shown in Table 2-1 of the environmental assessment and alternative route analysis (EA) prepared for the project. The routes were evaluated by Atkins, formerly PBS&J (STEC's environmental consultant), and described in Figures 2-4a through 2-4b of the EA.
6. On April 18, 2011, STEC mailed written notice of the filing of the application by first class mail to each landowner of record (as determined by current county tax roll information) that could be directly affected if the requested certificate amendment is granted. On April 18, 2011, STEC sent notice to municipal and governmental officials in Ector, Midland, Crane, Upton, Pecos, and Crockett Counties, and to electric utilities providing service within five miles of the proposed facility.
7. STEC published notice of the application in (a) the *Fort Stockton Pioneer*, a newspaper having general circulation in Pecos County, on April 21, 2011; (b) *The Crane News*, a newspaper having general circulation in Crane and Upton Counties, on April 21, 2011; (c) the *Pecos River Dispatch* (Rankin News) a newspaper having general circulation in Upton and Pecos Counties, on April 21, 2011; (d) *The Odessa American*, a newspaper having general circulation in Ector, Andrews, Brewster, Crane, Gaines, Jeff Davis, Midland, Pecos, Reeves, Upton, Ward, and Winkler Counties, on April 24, 2011; (e) and the *Midland Reporter Telegram*, a newspaper having general circulation in Midland,

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<sup>1</sup> *Remand of Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones)*, Docket No. 37902, Order No. 3 (Mar. 19, 2010).

<sup>2</sup> *Specific Subsequent Projects Severed from Docket No. 37902 (Remand of Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones))*, Docket No. 38045, Order on Remand (Sep. 27, 2010).

Ector, Howard, Crane, Glasscock, Martin, Upton, and Andrews Counties, on April 24, 2011.

8. On April 20, 2011, 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, establishing a list of issues to be addressed and issues not to be addressed in this proceeding.
9. On April 28, 2011, the SOAH administrative law Judges (ALJs) filed Order No. 1, establishing an intervention deadline of May 18, 2011, setting a procedural schedule, modifying discovery deadlines, noticing a prehearing conference, and requiring information from STEC and a recommendation from Commission Staff on the sufficiency of the application and notice.
10. On April 28, 2011, STEC advised the Director of Commission Advising and Docket Management that the procedural history portion of the order of referral contained errors.
11. On April 29, 2011, STEC filed an affidavit that a copy of the EA was sent to the Texas Parks and Wildlife Department (TPWD).
12. On May 2, 2011, Commission Staff, in response to Order No. 1, recommended that the application be deemed sufficient.
13. Notice of the application was published in the *Texas Register* on May 6, 2011.
14. On May 9, 2011, the Commission issued the supplemental order of referral and preliminary order, correcting errors in the history portion of the order of referral.
15. On May 9, 2011, STEC filed proof that notice was provided.
16. On May 11, 2011, Commission Staff filed a recommendation regarding sufficiency of notice, finding that STEC has substantially complied with P.U.C. PROC. R. 22.52(a) regarding mailed notice to municipalities, county governments and directly affected landowners, but recommending that STEC be required to send an updated notice to affected landowners concerning link A23 and supplement its application with a new map showing link A49.

17. On May 16, 2011, the SOAH ALJs filed Order No. 2, ruling on the sufficiency of the application, adopting a protective order, and ordering STEC to make corrections to its notice by May 25, 2011.
18. On May 25, 2011, STEC filed supplemental proof that notice was provided.
19. On June 2, 2011, a prehearing conference was held.
20. On June 6, 2011, the SOAH ALJs filed Order No. 3, memorializing the prehearing conference and ordering STEC to file an intervenor map no later than June 24, 2011, if no settlement had been reached.
21. Testimony and/or statements of position were filed by Jax Cowden for Cowden family interests on June 15, 2011; County of Upton and City of McCarney on June 16, 2011; Gary Drgac, Gloria R. Odom individually, and for the Estate of Eddie J. Odom, Deborah Storie, Neal Storie, Glass-Everitt Ranch, John and Marilyn Harris, TPWD, Randall Capps, and Occidental Permian Ltd. and OXY USA WTP LP (Occidental) on June 20, 2011; and Ameripol Synpol Corporation on June 22, 2011.
22. On June 24, 2011, STEC filed an intervenor map in accordance with SOAH Order No. 3.
23. On June 27, 2011, TPWD filed a letter offering information, comments, and recommendations concerning the routing of the line.
24. On June 28, 2011, the SOAH ALJs issued Order No. 4, dismissing Intervenors Victor Urias, Dan Brown, Nativida-Aida Quinones, Gary Stone, Jim & Nathana Fredrick and Marsha Wolf for failure to file testimony or a statement of position.
25. On June 30, 2011, STEC filed a corrected intervenor map.
26. On July 5, 2011, Commission Staff filed a statement of position and direct testimony.
27. On July 6, 2011, Commission Staff filed a revised statement of position and an erratum to the direct testimony.
28. On July 6, 2011, STEC, Commission Staff, and Occidental (collectively, joint parties) filed the motion to modify the procedural schedule.



29. On July 8, 2011, the SOAH ALJs issued Order No. 5, granting the motion to modify the procedural schedule.
30. On July 18, 2011, the SOAH ALJs issued Order No. 6, granting the motion of joint parties to approve an agreement that, if settlement is not reached and a hearing on the merits is necessary, STEC can present live rebuttal testimony at the hearing.
31. On July 19, 2011, STEC filed the following: (a) a motion to admit unanimous stipulation, supporting evidence and proposed order into the record, cancel hearing, remand docket to commission and request for expedited order; (b) a stipulation and motion for approval; (c) the supplemental direct testimony of Cory J. Allen, Rob R. Reid and Mark Shaw; and (d) a proposed order.
32. On July 21, 2011, SOAH Order No. 7 was filed granting the motion to admit evidence, cancelling hearing, and remanding the docket to the Commission. Evidence admitted into the record: (a) the stipulation, including stipulation exhibits 1, 2, and 3, which are maps identifying settlement route 18; (b) STEC's CCN application filed on April 18, 2011; (c) the direct testimonies of Cory J. Allen, Rob R. Reid, John W. Moore, and Mark S. Shaw; (d) the direct testimony of Randall Capps; (e) the direct testimony of Terry J. Payne; (f) the redacted testimony of Thomas T. Payton; (g) the direct testimony of Phillip D. Glass; (h) the direct testimony and errata of Mohammed Ally; (i) STEC's affidavits and proof of notice, filed on April 29, 2011, and May 25, 2011; (j) the supplemental testimony in support of settlement route 18 of Cory J. Allen, Rob R. Reid, and Mark Shaw; and (k) the proposed order.

**Description of the Transmission Project**

33. The project will be approximately 75.5 miles long. It will connect the expanded Oncor Electric Delivery Company, LLC (Oncor) Odessa EHV Switch #2 345-kV station, located approximately 0.6 miles east of Interstate Highway 20 in Ector County, to the expanded Lower Colorado River Authority Transmission Services Corporation (LCRA TSC) North McCamey station, located just north of the City of McCamey, and continue to the LCRA TSC new Bakersfield switching station, located approximately 6.2 miles north of Interstate Highway 10 in Pecos County.

34. The project is a CREZ project.
35. The expected in-service date of the project is December 2013.
36. The project will use steel monopole structures designated to support two three-phase circuits with two 1590 ACSR conductors bundled per phase. Initial construction will consist of one circuit.
37. Landowners overwhelmingly prefer the use of monopole structures because of the smaller footprint and aesthetic considerations.
38. Another factor that led to the choice of monopoles is the compressed schedule to complete the project, since lattice steel construction can require more time and labor to construct than monopole construction.
39. The right-of-way (ROW) width will be 125 feet, which will allow 7.5 feet of additional horizontal clearance between conductors displaced by high wind and allow three years of tree growth before pruning is necessary, consistent with STEC's vegetation management plan.
40. The steel monopole line is estimated to have the lowest single-circuit installation cost and initial construction savings will more than offset the higher cost to add the second circuit, if the second circuit is installed nine-years or more after initial construction.
41. The proposed transmission line project will be designed and constructed to meet or exceed the specifications set forth in the current edition of the National Electrical Safety Code. Because the safety code is not a design guide, additional design criteria will be used, including the American National Standards Institute standards.
42. The project is being financed by the City of Garland, pursuant to the participation agreement entered into by STEC and the City of Garland and approved by the Commission in Docket No. 38045.
43. Settlement route 18 is estimated to cost \$100,868,000 or \$1,336,000 per mile, which compares favorably to the estimated cost per mile of \$1,400,000 for this project in the Electric Reliability Council of Texas (ERCOT) CREZ Transmission Optimization (CTO) study.

44. The CTO study estimated the length of the line to be only 62 miles, but it used straight-line distances between the end points with no adjustments for land use, topography, or other constraints. Land use, topography and other constraints have caused settlement route 18 to be approximately 75.5 miles long.
45. Completion of the project will accomplish the intended result for the CREZ projects designated as the McCamey A-to-Odessa single-circuit, double-circuit-capable 345-kV line, and the McCamey C-to-McCamey A single-circuit, double-circuit-capable 345-kV transmission line projects in the CREZ transmission plan ordered by the Commission in Docket Nos. 36802<sup>3</sup> and 37902.

**Description of the Stipulation**

46. The stipulation recommends approval of route 18, which consists of links from preferred routes NM-B 2 and O-NM 14 and alternate route O-NM 5, with two specified modifications to accommodate land use.
47. The modifications have not diminished the electrical efficiency or reliability of the project.
48. The stipulation was signed by STEC, Commission Staff, all of the intervenors, and the landowners whose land is directly affected by the modifications to a route that was noticed (collectively, signatories). The signatories are as follows: STEC, Commission Staff, Intervenor OXY USA WTP LP and Occidental Permian Ltd. (Occidental); Philip Glass Land and Minerals, LLC, Kathleen Glass Guy and Gary Farm and Ranch LTD (Glass-Everitt Ranch); Gary Drgac; Estate of Eddie J. Odom, Gloria Odom, John and Marilyn Harris; Randall Capps; Cowden Property Owners; Deborah and Neal Storie; Ameripol Synpol Corp; Upton County; City of McCamey; and TPWD; landowners CW Hobbs Heirs, Ltd; ZPZ Delaware 1 LLC, a wholly owned subsidiary of Apache Corporation; William A. Wood, Jr.; JP Morgan Chase Bank, N.A. as Trustee of the Mary Binning Irrevocable Trust A, Virginia R. Lange Irrevocable Trust A, William A. Wood III Irrevocable Trust A, Danna Thompson and Jeffrey Brashears Irrevocable Trust B, Jennie Danna Miller Irrevocable Trust B, Susan Lloyd Irrevocable Trust B, Jeffrey L.

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<sup>3</sup> *Proceeding to Sequence Certificate of Convenience and Necessity Projects for the Subsequent Projects for the Competitive Renewable Energy Zones*, Docket No. 36802, Order (Apr. 5, 2010).

Bourgeois Irrevocable Trust B, James J. Bourgeois Irrevocable Trust B, Denise Taliaferro Irrevocable Trust B, and the Corinne Susan Danna Grantor Trust.

**Routing of the Project**

49. STEC contracted with Atkins, formerly PBS&J, to perform an EA of the proposed project area.
50. The objective of the EA was to select and evaluate several alternative transmission line routes, and to recommend a preferred route from an environmental and land-use standpoint.
51. Atkins examined potential routes according to the information required in the Commission's CCN application form, as well as the applicable criteria stated in PURA<sup>4</sup> § 37.056(c)(4) and P.U.C. SUBST. R. 25.101.
52. Atkins delineated a study area approximately 67 miles in length by approximately 16 miles in width, encompassing 1,072 square miles in Ector, Midland, Crane, Upton, Pecos, and Crockett Counties. The study area and preliminary routes were then presented to the public at two public meetings.
53. After the public meetings, Atkins and STEC performed additional reviews to look at areas of concern discussed at the public meetings, met with individual landowners and Commission Staff, and considered revisions to the preliminary routes. Utilizing this input, Atkins made final revisions to the preliminary routes and identified the preferred and alternative routes.
54. Ultimately, 17 alternative routes were selected for the Odessa-to-North McCamey segment and 6 alternative routes were selected for the North McCamey-to-Bakersfield segment.
55. In evaluating the alternative routes, 38 environmental and land use criteria were considered.

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<sup>4</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

56. Atkins recommended route O-NM 5 for the preferred route for the Odessa-to-North McCamey segment and route NM-B 2 as the preferred route for the North McCamey-to-Bakersfield segment.
57. STEC chose route O-NM 14 as the preferred route for the Odessa-to-North McCamey segment rather than Atkins' preferred route because route O-NM 14 avoided habitable structures, did not affect cropland, and avoided a location where multiple transmission lines converge. STEC agreed with Atkins' choice of route NM-B 2 as the preferred route for the North McCamey-to-Bakersfield segment.
58. STEC presented an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.
59. The stipulation proposed a route that combined links from route O-NM 5, route O-NM 14 with a modification, and route NM-B 2 with a modification consisting of the following links: A53b, A53a, A48, A44, A42, A33b, A33a, A32, A22, A14a, A1c-modified-a, A1d, A1c-modified-b, A1a, B1, B3, B5, B6, B12a, B12b, B12-modified-b and B27. STEC will construct the entire line using monopoles.
60. Based on the statutory CCN factors and the Commission's routing criteria, there are no alternative routes or facility configurations that would have a less negative impact on landowners. Based on these factors, and the fact that all of the intervenors and the landowners who will be impacted by the route modifications have signed the stipulation, route 18 is reasonable and should be approved.

**Engineering Constraints**

61. There are no known engineering constraints that cannot be resolved during the design and construction phases of the project.

**Environmental Impact and Community Values**

62. The project will traverse Ector, Midland, Upton, Crane, Crockett, and Pecos Counties. The cities of Crane and McCamey are the only incorporated cities located entirely within the study area boundary. The southern portion of the City of Odessa is also within the study area. Land use within the six study area counties is overwhelmingly rangeland. The primary livestock raised on lands are sheep, goats, and cattle. There is also a small

amount of irrigated farmland, primarily in Ector County just south of Odessa and in Pecos County along the Pecos River. In addition to rangeland, oil and gas production are important land uses. More recently, large wind farms have been constructed in the region.

63. Route 18 crosses no pasture or cropland irrigated by traveling irrigation systems (either rolling or center-pivot types).
64. There is one FAA-registered airfield within 20,000 feet of the ROW centerline. There are no FAA-registered airfields within 10,000 feet of the ROW centerline. There are no private airstrips within 10,000 feet of the ROW centerline. There are no heliports within 5,000 feet of the ROW centerline.
65. There are no commercial AM radio transmitters within 10,000 feet of the ROW centerline. There are two FM radio transmitters, microwave towers and other electronic installations within 2,000 feet of the ROW centerline.
66. All necessary governmental permits or approvals will be obtained by STEC prior to initiating construction of the project.
67. STEC and Atkins sought input regarding the routing of the project from landowners, public officials, and other interested parties. In connection with their work, Atkins sent letters to public officials in the cities of Crane, Odessa, McCamey, and Fort Stockton, as well as to county officials in Crane, Ector, Midland, Upton, Crockett, and Pecos Counties.
68. Two public open-house meetings were held. These meetings were held in McCamey, Texas on January 11, 2011 and in Odessa, Texas on January 12, 2011. A total of 111 people attended the two meetings.

**Recreational and Park Areas**

69. Route 18 will not significantly impact the use or enjoyment of park and recreational facilities.
70. Route 18 crosses no parks or recreational areas and no parks or recreational areas are within 1,000 feet of the project centerline.

**Historical Values**

71. No significant impacts to archaeological or historical resources are anticipated as a result of the construction of Route 18.
72. There is one recorded cultural resource site crossed by the ROW and two additional recorded cultural resource sites within 1,000 feet of the ROW centerline.
73. There are no National Register listed or determined-eligible sites crossed or within 1,000 feet of the ROW centerline. The length of ROW crossing areas of high archaeological/historical site potential is 28.34 miles. If STEC, or its contractor, encounters any archeological artifacts or other cultural resources during construction, construction at that location will cease immediately, the Texas Historical Commission (THC) will be contacted, and STEC and its contractor will take action as directed by THC.
74. In the event that STEC or its contractors encounter any artifacts or other cultural resources during construction, it is reasonable for all work to cease immediately in the vicinity of the resource and for STEC to report the discovery to the THC.

**Aesthetic Values**

75. Aesthetic impacts of route 18 have been considered and minimized to the extent practicable.
76. Construction of the project could have both temporary and permanent aesthetic effects. Temporary effects include views of the actual construction and any clearing of ROW. Permanent impacts from the project will be the views of the structures and lines themselves, as well as views of cleared ROW. It is estimated that approximately 10.23 miles of ROW, with its structures, is located within the foreground visual zone of U.S. and state highways. There is no ROW located within the foreground visual zone of any parks or recreational areas.

**Environmental Integrity**

77. The EA prepared by Atkins analyzed the possible impacts of the project on numerous different environmental factors.



78. Construction of route 18 will not have a significant effect on the physiographic or geologic features of the area.
79. No significant impact to soils is anticipated from construction of route 18.
80. Atkins appropriately performed an evaluation of the impacts of the project on endangered and threatened plant and wildlife species.
81. Route 18 is unlikely to affect threatened or endangered wildlife species, and any effect the project will have on these species will be mitigated by STEC's standard practices.
82. It is reasonable for STEC to 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.
83. It is reasonable for STEC to implement erosion-control measures as appropriate and return each affected landowner's property to its original contours unless otherwise agreed to by the landowners.
84. It is reasonable for STEC to exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW.
85. The route 18 ROW crosses 0.16 miles of potential wetlands.
86. The route 18 ROW does not cross any known occupied habitat of endangered or threatened species. Consultation with the U.S. Fish and Wildlife Service (USFWS) will be requested should any federally listed threatened or endangered species be observed during construction.
87. The route 18 ROW does not cross any open water such as playa lakes or ponds.
88. The route 18 ROW parallels (within 100 feet) approximately 0.19 miles of streams or rivers.
89. Route 18 will cross streams or rivers 33 times.
90. Route 18 will cross approximately 3.61 miles of mapped floodplains.
91. The Route 18 ROW will not cross any lakes or ponds.

92. Route 18 crosses approximately 16.12 miles of upland woodland/brushland.
93. Route 18 crosses 0.38 miles of bottomland/riparian woodland.
94. The project is not located within the coastal management program boundary, as defined in 31 T.A.C. § 503.1

**Need for the Proposed Transmission Line**

95. The project was specifically listed as a CREZ project in the Commission's final orders in Docket Nos. 36802 and 37902.
96. As a CREZ transmission project identified in Docket Nos. 36802 and 37902, the project is exempt under PURA §§ 39.203(e) and 39.904(h) from the requirement to consider the factors in PURA § 37.056(c)(1)-(3) and (4)(E).
97. Because the project is a CREZ project, no alternatives to the project have been considered in this proceeding.

**Goal for Renewable Energy**

98. To fulfill the renewable-energy goals established by the Texas Legislature in PURA § 39.904(a), the Commission adopted in *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008), a transmission plan to deliver renewable energy to market and in Docket No. 37902, designated certain transmission providers to build the required transmission facilities.
99. In Docket No. 33672, the Commission determined that the transmission facilities identified in the final order, including this project, were necessary to deliver to customers the renewable energy generated in the CREZ.

**Compatible Corridors**

100. Route 18 uses or parallels existing corridors, including property boundaries, for approximately 49.44 miles.

**Prudent Avoidance**

101. Route 18 conforms to the Commission's policy of prudent avoidance.

102. Prudent avoidance is the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.
103. Route 18 has no habitable structures within 500 feet of the ROW centerline.

**Estimated Cost**

104. The estimated cost to construct route 18 is \$100,868,000.
105. STEC's estimated cost for route 18 is \$1,336,000 per mile, which is less than the ERCOT's estimate of \$1,400,000 per mile for this project.
106. The estimated cost of route 18 is only an estimate since the route has not yet been surveyed and final engineering design has not been performed.

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

107. The names of the substations and length of the line have changed from those set out in the CTO study.
108. The CTO study estimated the length of the proposed line to be 62 miles. This length was point-to-point, with no consideration given to practical routing concerns.
109. To avoid confusion caused by multiple use of *McCamey* in station names, the project owner of these stations, LCRA TSC, renamed McCamey C as Bakersfield and McCamey A as North McCamey.
110. ERCOT was agreeable to the changes from the CTO study. ERCOT provided a letter attesting that increasing the circuit length will not have a quantifiable impact in the overall effectiveness of the CREZ transmission plan. The project station names were coordinated with ERCOT and other transmission providers. ERCOT verified that the new station names do not conflict with existing station names in the ERCOT data dictionary.

**Financial Commitment**

111. Pursuant to P.U.C. SUBST. R. 25.174(d)(10), the level of financial commitment by generators is sufficient to approve STEC's application for this CREZ project.

**TPWD's Recommendations and Comments**

112. TPWD provided recommendations and comments in a letter dated June 16, 2011.
113. No modifications to the project are required as a result of the recommendations or comments made by TPWD in its June 16, 2011 letter.
114. TPWD's factors of concern in identifying its preferred route are narrower than the factors the Commission is required to consider under § 37.056 of PURA and P.U.C. SUBST. R. 25.101.
115. TPWD recommends that the Commission select routes for the two segments that would minimize impacts to natural resources, such as route O-NM 14 and route NM-B 3. This recommendation is based solely on minimizing impacts to natural resources and does not consider other factors such as land use, community values, prudent avoidance, historical and cultural resources, engineering, and cost. STEC is committed to mitigating impacts to natural resources, while balancing all of the factors identified in PURA and Commission rules.
116. It is reasonable for STEC to contract with a qualified consultant to inspect for threatened or endangered species prior to ROW clearing or construction.
117. STEC's current best practices are sufficient and thus no permitted biological monitor is necessary during clearing and construction activities.
118. STEC will minimize impact to native vegetation along the ROW during clearing, construction and maintenance as much as possible, while ensuring the safe and efficient operation of the line.
119. It is reasonable for STEC to follow a Storm Water Pollution Prevention Plan during construction that will minimize the effects of erosion and will re-seed disturbed areas with a mixture that will support wildlife and help with erosion control.
120. STEC will minimize project impact to riparian areas by using hand clearing techniques that leave underlying brush undamaged.
121. The Commission has recognized that utilities do not gain access to private property until after the Commission approves a route. The EA filed with STEC's application considers

known occupied habitat locations of endangered or threatened species based on the best information available. Once the Commission approves a route, STEC will undertake on-the-ground measures to determine whether endangered or threatened species or their habitat are present.

122. Route 18 does not utilize link A23. STEC will monitor the listing status of the dunes sagebrush lizard and spot-tailed earless lizard, and will implement coordination activities with the U.S. Fish and Wildlife Service, if necessary.
123. STEC will span Monahans Draw and any associated wetlands, and will install bird flight diverters on the ground wires at the Monahans Draw and Pecos River crossings.
124. STEC will apply bird flight diverters to an overhead ground wire in spans where the line crosses waterways.
125. STEC will implement best management practices in order to comply with the Migratory Bird Treaty Act, in connection with construction and maintenance of the project.
126. Implementation of a mitigation plan for the life of the project is not required by any law, statute or regulation.
127. 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 STEC's mitigation practices set out in the application and its testimony will sufficiently address the concerns expressed by TPWD in its recommendations and comments.

## **II. Conclusions of Law**

1. STEC is an electric cooperative under the Electric Cooperative Corporation Act, TEX. UTIL. CODE ANN. §§ 161.001-161.252 (Vernon 2007 & Supp. 2010).
2. The Commission has jurisdiction over the application pursuant to PURA §§ 37.051, 37.053, 37.054, 37.056 and 39.203(e).

3. The application meets the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3).
4. SOAH exercised jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2010).
5. Notice of the application was provided in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).
6. This docket was processed in accordance with the requirements of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2010) (APA), PURA, and Commission rules.
7. STEC is entitled to approval of the application as described in the findings of fact utilizing route 18, taking into consideration the applicable factors set out in § 37.056 of PURA and P.U.C. SUBST. R. 25.101.
8. Route 18 complies with all aspects of PURA § 37.056 and P.U.C. SUBST. R. 25.101, including the Commission's policy of prudent avoidance.
9. The project will accomplish the intended results for the CREZ project designated and ordered by the Commission in Docket Nos. 37902 and 38045.
10. Route 18 is consistent with and in furtherance of the goals and mandates for renewable energy established in PURA § 39.904(a).
11. The project, as a CREZ transmission project identified in Docket Nos. 33672, 35665, and 37902, is exempt under PURA §§ 39.203(e) and 39.904(h) from the requirement of proving that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area, and the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted.
12. The application may be approved without a hearing pursuant to § 2001.056 of the APA and P.U.C. PROC. R. 22.35.

13. The application does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
14. STEC complied with P.U.C. SUBST. R. 25.101 and 25.174(d) in the application.
15. The requirements for informal disposition pursuant to 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 and this Order, STEC's application to amend CCN No. 30146 is approved. STEC is authorized to build a new 345-kV single-circuit, double-circuit-capable transmission line that extends from Odessa-to-McCamey A, which was renamed North McCamey, and from North McCamey-to-McCamey C, which was renamed Bakersfield.
2. The project will follow the route described as settlement route 18 in the stipulation and stipulation exhibits 1, 2, and 3, which are maps depicting route 18. If there is a need to deviate from the modifications described in the stipulation, then STEC shall, in consultation with the affected property owners, construct the project in a manner that most closely aligns with route 18.
3. STEC 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. STEC shall not be required to restore original contours and grades where a different contour or grade is necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.
4. In the event STEC or its contractors encounter any artifacts or other cultural resources during project construction, STEC 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. STEC shall follow the procedures described in the following publications for protecting raptors: *Suggested Practices of 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. STEC shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
7. STEC shall ensure that work is performed according to all applicable state and federal environmental laws and regulations.
8. STEC shall avoid, minimize, and mitigate vegetation impacts, and prior to any construction, any rare plant communities within the project footprint will be identified, and native plant communities will be avoided to the greatest extent practicable.
9. STEC shall allow degraded areas to seed naturally or reseed such areas with native species, to restore a natural appearance and to provide food and cover for wildlife. STEC shall work with landowners and the Texas Department of Transportation to reseed areas impacted by construction, considering landowners preferences.
10. STEC shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the ROW, and such herbicide use shall comply with rules and guidelines established in the Federal Insecticide, Fungicide and Rodenticide Act and with the Texas Department of Agriculture regulations.
11. STEC 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, STEC shall revegetate using native species, shall consider landowner preferences, and to the maximum extent practicable, avoid environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS. STEC shall coordinate with TPWD and USFWS and conduct presence/absence surveys as necessary.
12. STEC shall minimize impacts to water resources by spanning area rivers and streams and avoiding or minimizing placement of supporting structures in the streambed of drainage features. STEC shall transport machinery and equipment around the areas via existing roads to avoid direct crossings. Any bank or streambed alterations shall be conducted

- according to federal and state laws, regulations, and permits. Selective clearing to minimize erosion shall be used. There shall be proper control of petroleum and chemical products.
13. STEC shall implement procedures to avoid potential bird collisions. Efforts shall be taken to place structures in the center of the flyway to increase visibility, and STEC shall apply visual markers in spans over water bodies and in locations established as riparian corridors.
  14. STEC shall coordinate with TPWD and USFWS, and shall conduct assessments of potential habitat for endangered species. If necessary, STEC shall consult with USFWS concerning minor route adjustments, specific placement of structures, ROW clearing, construction, and any required mitigation. STEC shall attempt to avoid or reduce potential impacts to all wildlife.
  15. STEC shall comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the project.
  16. STEC 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.
  17. Once a route is selected, STEC shall perform a survey of the area, and if permits are necessary, apply for and comply with all permit conditions. STEC shall account for the location of endangered or threatened species on individual landowners' property or additional known occupied habitat by routing adjustments, construction procedures and techniques, and mitigation. STEC shall consult with the USFWS for known occupied or potential habitat for endangered species.
  18. STEC shall comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water prevention, and all other environmental concerns.
  19. STEC shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the project. Any minor deviation in 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

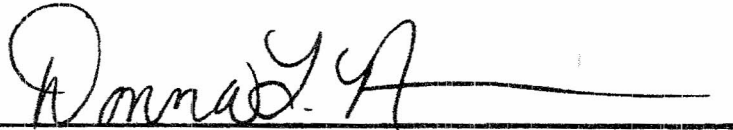
affect only those landowners that have agreed to the minor deviation, excluding public ROWs. Any agreed minor deviations shall not delay the project beyond its Commission-required completion date nor shall any minor deviation add any significant cost to the project.

20. STEC 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, STEC 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 the project. Unless these two conditions are met, this paragraph does not authorize STEC to deviate from the approved route, except as allowed by the other ordering paragraphs in this Order.
21. STEC shall file in Project No. 37858, information pursuant to P.U.C. SUBST. R. 25.216(f) and the Order in Docket No. 37902. STEC shall update the reporting of this project on their 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, STEC shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.
22. 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. Entry of this Order, consistent with the stipulation, shall not be regarded as binding, holding, or precedent, as to the appropriateness of any principle that may underlie the stipulation.

23. 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 23<sup>rd</sup> day of August 2011.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**DONNA L. NELSON, CHAIRMAN**



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