



Control Number: 38750



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**PUC DOCKET NO. 38750
SOAH DOCKET NO. 473-11-0946**

APPLICATION OF SHARYLAND UTILITIES, LP TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE HEREFORD TO NAZARETH TO SILVERTON 345-KV CREZ TRANSMISSION LINE IN BRISCOE, CASTRO, DEAF SMITH, RANDALL, AND SWISHER COUNTIES	§ § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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ORDER

This Order addresses the application of Sharyland Utilities, LP to amend its certificate of convenience and necessity (CCN) for the Hereford-to-Nazareth-to-Silverton 345-kV competitive renewable energy zone (CREZ) transmission line. A unanimous stipulation and agreement was executed that resolves all issues in this proceeding and supports the selection and approval of route HN S2 for the Hereford-to-Nazareth segment in eastern Deaf Smith and Castro counties and route NS S12 for the Nazareth-to-Silverton segment in Castro, Swisher, and southwest Briscoe counties, as described in the stipulation. Consistent with the stipulation, Sharyland's application is approved.

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

I. Findings of Fact

Procedural History and General Project Description

1. Sharyland is an investor-owned electric utility providing service under CCN Nos. 30026, 30114, 30191, and 30192.
2. On October 20, 2010, Sharyland filed this application.
3. Sharyland requested approval to construct a new 345-kV single-circuit CREZ transmission line on double-circuit-capable lattice towers that extends from the Hereford station in Deaf Smith County to the proposed Nazareth station in Castro County, and

from the Nazareth station to the proposed Silverton station in Briscoe County. The name of the project is the Hereford-to-Nazareth-to-Silverton transmission-line project.

4. On October 20, 2010, Sharyland filed the direct testimony of Mark E. Caskey, Mark D. Meyer, and Rob R. Reid.
5. On October 20, 2010, Sharyland mailed written notice, by first class mail, of the application, including maps, written descriptions of Sharyland's preferred and alternative routes, and a copy of the Commission's brochure entitled *Landowners and Transmission Line Cases at the PUC for Competitive Renewable Energy Zone (CREZ) Projects*, to each landowner as stated on current county tax rolls that could be directly affected if Sharyland's CCN is amended.
6. On October 20, 2010, Sharyland mailed written notice of the filing of the application, including maps and written descriptions of Sharyland's preferred and alternative routes, to (a) each neighboring utility providing the same utility service within five miles of the requested facilities, including Deaf Smith Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Southwestern Public Service Company, and Swisher Electric Cooperative, Inc.; (b) each municipality located within five miles of the requested facilities, including the cities of Silverton, Tulia, Nazareth, Kress, Dimmitt, and Hereford, and the District 2 Texas Farm Bureau; and (c) each county in which any portion of the requested facilities could be located, including the counties of Briscoe, Castro, Deaf Smith, Randall, and Swisher.
7. Sharyland published notice of the application on the following dates in the following newspapers having general circulation in the counties where the amended CCN is being requested: *Castro County News* on October 21, 2010, *Hereford Brand* on October 21, 2010, *Tulia Herald* on October 21, 2010, *The Valley Tribune* on October 26, 2010, *Swisher County News* on October 26, 2010, and *The Briscoe County News* on October 28, 2010.
8. On October 22, 2010, Sharyland filed an affidavit attesting to the provision of copies of its environmental assessments and alternative route analyses to the Texas Parks and Wildlife Department (TPWD).

9. On October 25, 2010, the Commission referred this matter to the State Office of Administrative Hearings (SOAH), including a list of issues to be addressed and a deadline for decision.
10. On October 27, 2010, the SOAH administrative law judge (ALJ) issued Order No. 1, requiring, among other things, information from Sharyland regarding notice, comments from Commission Staff regarding sufficiency of notice, and a recommendation from Commission Staff regarding the sufficiency of the application.
11. On November 3, 2010, Commission Staff filed a response to Order No. 1, finding the application sufficient and not finding any material deficiencies within the application.
12. On November 9, 2010, the SOAH ALJ issued Order No. 2, which, among other things, scheduled the prehearing conference for November 30, 2010, set a deadline for route adequacy motions, and found the application materially sufficient.
13. On November 10, 2010, Sharyland filed an affidavit attesting to the delivery of notice of the application to directly affected landowners and neighboring utilities, municipalities, and counties, and publication of notice in newspapers having general circulation in counties where the requested facilities could be located.
14. On November 12, 2010, Commission Staff filed its comments on notice, stating that Commission Staff found Sharyland's provision of notice in compliance with P.U.C. PROC. R. 22.52(a) and Order No. 1, and recommended that Sharyland's notice be deemed sufficient.
15. On November 19, 2010, the SOAH ALJ issued Order No. 3, providing notice of the November 30, 2010 prehearing conference.
16. On November 30, 2010, the prehearing conference was held.
17. On December 2, 2010, the SOAH ALJ issued Order No. 4 which, among other things, stated that Sharyland's provision of notice complied with all applicable legal requirements, admitted specified parties, adopted a procedural schedule, and set the hearing on the merits to convene on January 31, 2011.

18. On December 21, 2010, TPWD filed a letter containing comments and recommendations regarding the proposed transmission-line project.
19. On January 5, 2011, the SOAH ALJ issued Order No. 5, dismissing specified intervenors for not filing a statement of position or testimony by December 21, 2010, as required by Order No. 4.
20. The following intervenors filed direct testimony and/or statements of position in this docket: Donald Ebeling; Arthur I. Chenoweth Jr.; David and Sheila Dunn; John Dunn; Cory Dunn; John Browning (individually, and on behalf of Basic Producers, Inc. and Bar Bar A Ranch Company); Robert Lowrey; Leesa Price; Clifford Jonathan Vars III; the Laura E. Vars Revocable Trust; David T. Spencer; Chamisa Energy Company, LLC; Ben F. Howard; Southwestern Public Service Company; Mike and Jay Long; the Susan McCormick Trust; David Horn; Kenneth Moore; and Gaylon E. Youngquist.
21. On January 11, 2011, Commission Staff filed the direct testimony of Chris Roelse.
22. On January 18, 2011, Sharyland filed the rebuttal testimony of Mark E. Caskey and Rob R. Reid.
23. On January 19, 2011, the SOAH ALJ issued Order No. 6 which, among other things, reinstated specified intervenors.
24. On January 28, 2011, a joint notice of unanimous stipulation and agreement and joint motion to admit evidence and remand proceeding was entered, which resolves all issues in this docket. The parties to this proceeding are Sharyland, Commission Staff, and all intervenors in this proceeding (collectively, signatories). Consistent with the stipulation, the signatories agreed that they would seek the Commission's approval of routes HN S2 and NS S12 as described in the stipulation. The stipulation was filed as an attachment to the joint notice and motion.
25. On January 28, 2011, Sharyland filed the supplemental testimonies of Mark E. Caskey, Mark D. Meyer, and Rob R. Reid.
26. On February 2, 2011, the SOAH ALJ issued Order No. 8, memorializing the prehearing conference held on January 31, 2011, admitting evidence, remanding the settled case to the Commission, and dismissing the SOAH docket. The documents admitted into

evidence were: maps showing HN S2; maps showing NS S12; environmental data table (EDT) for route HN S2; EDT for route NS S12; Sharyland's application with direct testimonies of Mark E. Caskey, Mark D. Meyer, and Rob R. Reid; Sharyland's proof of notice, intervenor testimonies of David Dunn, John Browning, Robert Lowrey, David T. Spencer, Alissa Oppenheimer, and David Horn; Commission Staff testimony of Chris Roelse; Sharyland rebuttal testimonies of Mark E. Caskey and Rob R. Reid; and Sharyland supplemental testimonies of Mark E. Caskey, Mark D. Meyer, and Rob R. Reid.

Application

27. Sharyland's application is sufficient. The application contains an adequate number of reasonably differentiated alternative routes for both the Hereford-to-Nazareth and Nazareth-to-Silverton segments to conduct a proper evaluation.
28. Sharyland submitted the application in compliance with *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from the Competitive Renewable Energy Zones*, Docket No. 37902, Order (Mar. 30, 2010) and *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones (CREZ)*, Docket No. 36802, Order (Apr. 5, 2010), which assigned Sharyland responsibility for CREZ facilities.
29. As a CREZ transmission-line project identified in *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing (May 15, 2009) and Docket No. 37902, the proposed transmission-line project will accomplish the intended result for the CREZ projects designated as "Panhandle AA-to-Panhandle AC single-circuit, double-circuit-capable 345-kV line" and "Panhandle AA-to-Panhandle AB single-circuit, double-circuit-capable 345-kV line" in the CREZ transmission plan and ordered by the Commission in Docket Nos. 37902 and 36802.

Routing of the Project

30. Sharyland retained PBS&J to delineate and evaluate alternative routes for the Hereford-to-Nazareth and Nazareth-to-Silverton segments and to perform environmental assessments.
31. Sharyland's application proposed one preferred route (route HN 2) and eight alternative routes for the Hereford-to-Nazareth segment and one preferred route (route NS 4) and 10 alternative routes for the Nazareth-to-Silverton segment.
32. Sharyland considered and submitted a sufficient number of geographically diverse routes for the proposed transmission-line project.
33. Pursuant to the stipulation, the signatories agreed they would seek the Commission's approval of HN S2 for the Hereford-to-Nazareth segment and NS S12 for the Nazareth-to-Silverton segment.
34. No party to this docket contests the use of routes HN S2 and NS S12 for the proposed transmission-line project.
35. No alternative routes or facilities configurations have been proposed that would have a less negative impact on landowners.
36. Route HN S2 consists of the following links that were proposed in Sharyland's application: D, I, K, Y, and EE. Route NS S12 consists of the following links that were proposed in Sharyland's application: B, B', A1, A2, H', H", A6, A7, A8, A10, AA, FF, A13, and II'. Pursuant to the stipulation, the signatories agreed to modify the links contained in routes HN S2 and NS S12 as depicted and described in the maps attached to the stipulation as Exhibits B1 and B2 to more closely follow property boundaries and avoid areas of concern identified by affected landowners.
37. All landowners, neighboring utilities, municipalities, and counties directly affected by routes HN S2 and NS S12 were provided notice of this proceeding.
38. Routes HN S2 and NS S12 will not diminish the electric efficiency or reliability of the proposed transmission-line project.

39. The right-of-way for routes HN S2 and NS S12 will be 175 feet wide, but Sharyland will have the ability to require a wider right-of-way should engineering requirements or compliance with relevant codes and standards for construction or operation of the transmission line necessitate a wider right-of-way.
40. Routes HN S2 and NS S12 are the most desirable routes because they best meet the considerations set forth in the Commission's preliminary order in this docket.

Effect on Other Utilities

41. Routes HN S2 and NS S12 will cross or parallel existing transmission and distribution lines operated by other utilities in the region. Crossings or paralleling of other utilities' facilities will require coordination between Sharyland and such utilities to avoid adverse impacts.
42. Some utilities in the area where Sharyland's proposed transmission-line project will be constructed are members of the Southwest Power Pool (SPP). Sharyland's proposed transmission-line project will be connected to the Electric Reliability Council of Texas (ERCOT) electrical grid, which is asynchronous with SPP.
43. Transmission line crossings and paralleling of lines owned and operated by different utilities are common in the electric industry, and there are well established engineering techniques for avoiding adverse impacts during construction or operation of lines that cross or parallel other lines. Utilities typically work together to coordinate construction and operation of facilities that are in proximity to one another.
44. Mutual coupling occurs when transmission lines parallel one another in close proximity, and an interaction of electric and magnetic fields occurs between the lines. There are accepted engineering methods to account for and mitigate the effects of mutual couplings for transmission lines that share common corridors.
45. Crossings or paralleling of existing and planned transmission lines by routes HN S2 and NS S12 can be addressed through coordination between Sharyland and the appropriate utilities and the application of common engineering measures.

Community Values

46. Sharyland and PBS&J sought input regarding the routing of the proposed transmission-line project from landowners, public officials, and other interested parties. In connection with their work, PBS&J sent letters to the public officials of the cities of Silverton, Tulia, Nazareth, Kress, Dimmitt, Canyon, Hart, and Hereford as well as to county officials in Briscoe, Castro, Deaf Smith, Randall, and Swisher counties, and other state and federal officials.
47. Sharyland held two public open house meetings for the Hereford-to-Nazareth segment. These meetings were held in Hereford, Texas on October 5, 2009, and in Nazareth, Texas on October 8, 2009. The meeting in Nazareth was a joint public open-house meeting also held for the Nazareth-to-Silverton segment.
48. In addition to the open-house meeting in Nazareth on October 8, 2009, Sharyland held a public open-house meeting for the Nazareth-to-Silverton segment in Tulia, Texas on October 6, 2009.
49. The public meetings in Tulia, Nazareth, and Hereford were attended by 152, 62, and 43 people, respectively.
50. Based on information received at the public meetings held in October 2009, some proposed links were modified to reduce impacts to habitable structures and other constraints. Links also were modified as a result of the relocation of the proposed Silverton station.
51. Information received from the public meetings and from local, state, and federal agencies was considered and incorporated into the selection of preferred and alternative routes by Sharyland.
52. PBS&J personnel conducted extensive reviews of the study areas to identify sensitive environmental and land use features and other constraints, including habitable structures, cemeteries, churches, and schools.
53. Sharyland considered and avoided population centers and other locations where people gather and live when routing all of its proposed routes for the proposed transmission-line project.

54. Routes HN S2 and NS S12 avoid all cities in the study areas, including Silverton, Tulia, Nazareth, Kress, Hart, and Dimmitt.
55. There are no significant impacts to any communication facilities, airports, airstrips, or heliports anticipated from construction of the proposed transmission-line project along routes HN S2 and NS S12.
56. There are no commercial AM radio transmitters within 10,000 feet of the centerlines of routes HN S2 and NS S12, and there are no FM radio transmitters, microwave towers, or other electronic installations within 2,000 feet of the centerlines of routes HN S2 and NS S12.
57. There are zero and one FAA-registered airfields within 20,000 feet of the centerlines of routes HN S2 and NS S12, respectively. There are zero and one active private airstrips within 10,000 feet of the centerlines of routes HN S2 and NS S12, respectively. There are zero heliports within 5,000 feet of the centerlines of routes HN S2 and NS S12.
58. Routes HN S2 and NS S12 traverse 0.76 and 1.43 miles, respectively, of cropland or pastureland with mobile irrigation systems. The proposed transmission-line project will be routed so as not to affect farming operations following construction of the project. This will include the positioning of transmission structures so that the structures span the traveling arc of mobile irrigation systems.
59. It is reasonable to require that Sharyland cooperate with directly affected landowners to implement minor deviations in the approved routes to minimize the impact of the proposed transmission-line project.
60. A habitable structure is defined as one that is normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.
61. Zero and eight habitable structures are within 500 feet of the centerlines of routes HN S2 and NS S12, respectively.

Recreational and Park Areas

62. The proposed transmission-line project will not significantly impact the use or enjoyment of park and recreational facilities.

63. There are no parks or recreational areas owned by a governmental body or an organized group, club, or church crossed by routes HN S2 and NS S12.
64. There are no parks or recreational areas owned by a governmental body or an organized group, club, or church within 1,000 feet of the centerlines of routes HN S2 and NS S12.
65. Routes HN S2 and NS S12 are not anticipated to have a negative impact on any park or recreational area.

Historical Values

66. No significant impacts to archaeological or historical resources are anticipated as a result of the construction of the proposed transmission-line project.
67. Routes HN S2 and NS S12 do not cross any recorded cultural resource sites.
68. No recorded cultural resource sites are within 1,000 feet of the centerlines of routes HN S2 and NS S12.
69. In the event Sharyland 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 Sharyland to report the discovery to the Texas Historical Commission (THC).

Aesthetic Values

70. Aesthetic impacts of the proposed transmission-line project have been considered and minimized to the extent practicable.
71. Routes HN S2 and NS S12 do not cross park or recreational areas owned by a governmental body or an organized group, club, or church, and no such parks or recreational areas are within 1,000 feet of the centerlines of routes HN S2 and NS S12.
72. Routes HN S2 and NS S12 do not have any length of their routes within the foreground visual zone of parks or recreational areas owned by a governmental body or an organized group, club, or church, and approximately 1.11 and 2.0 miles of routes HN S2 and NS S12, respectively, lie within the foreground visual zone of a state or U.S. highway.

Environmental Integrity

73. The environmental assessment prepared by PBS&J analyzed the possible impacts of the proposed transmission-line project on numerous, different environmental factors.
74. Construction of the proposed transmission-line project will not have significant effect on the physiographic or geologic features of the area.
75. No significant impact to soils is anticipated from construction of the proposed transmission-line project.
76. Impacts on prime farmland will be insignificant because of the small footprint of the tower structures.
77. Construction of the proposed transmission-line project should have little adverse impact on the surface- or ground-water resources of the area.
78. The proposed transmission-line project is not located either in whole or in part within the Texas Coastal Management program boundary.
79. PBS&J appropriately performed an evaluation of the impacts of the proposed transmission-line project on endangered and threatened plant and wildlife species.
80. Routes HN S2 and NS S12 do not cross any known locations of threatened or endangered plant species.
81. The proposed transmission-line project is unlikely to affect threatened or endangered wildlife species, and any effect the project will have on these species will be mitigated by Sharyland's standard practices.
82. To protect raptors and migratory birds, it is reasonable for Sharyland to follow the procedures outlined in the following publication 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 the APLIC in April 2005.
83. It is reasonable for Sharyland to minimize the amount of flora and fauna disturbed during construction of the proposed transmission-line project, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line.

84. It is reasonable for Sharyland 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.

85. It is reasonable for Sharyland to exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way.

Goal for Renewable Energy

86. To fulfill the renewable-energy goals established by the Legislature in PURA¹ § 39.904(a) the Commission adopted, in *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672 (Oct. 7, 2008), 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.

87. In Docket No. 33672, the Commission determined that the transmission facilities identified in its final order, including the Hereford-to-Nazareth-to-Silverton transmission line, were necessary to deliver to customers renewable energy generated in the CREZ.

Engineering Constraints

88. There are no known engineering constraints along routes HN S2 and NS S12 that cannot be resolved with additional consideration during the design and construction phase of the proposed transmission-line project.

Estimated Costs

89. The overall cost of construction of routes HN S2 and NS S12, including construction of the Nazareth station, is estimated to be \$133,510,000.

90. The cost for the transmission-line portion of route HN S2 is estimated to be \$37,480,000. The cost for the transmission-line portion of route NS S12 is estimated to be \$72,360,000. The cost for Nazareth station is estimated to be \$23,670,000.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010) (PURA).

91. The estimated costs for the transmission-line portions of the most expensive Hereford-to-Nazareth and Nazareth-to-Silverton routes proposed in Sharyland's application are \$42,850,000 and \$71,710,000, respectively.
92. The ERCOT CREZ transmission optimization study (CTO study) estimated the Hereford-to-Nazareth and Nazareth-to-Silverton segments would cost \$35,000,000 and \$78,400,000, respectively. These estimates did not include the cost of right-of-way and land acquisition, and the CTO study utilized a transmission-line length of 56 miles for the Nazareth-to-Silverton segment while NS S12 is approximately 46 miles in length. The CTO study also did not include the cost of the Nazareth station.

Compatible Right of Way

93. Routes HN S2 and NS S12 parallel compatible rights-of-way and apparent property lines for 25.8 and 79.2 percent, respectively, of their lengths.

Prudent Avoidance

94. Routes HN S2 and NS S12 comply with the Commission's policy of prudent avoidance.
95. Routes HN S2 and NS S12 have zero and eight habitable structures, respectively, located within 500 feet of their centerlines.

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

96. The CTO study proposed constructing the proposed transmission-line project using 2-wire bundled 1590 aluminum conductor steel reinforced conductor. Sharyland proposes using a 2-wire bundled 1939 kcmil aluminum conductor steel reinforced/trapezoidal wire conductor.
97. Consistent with ERCOT's opinion that the location of the Nazareth station could be adjusted from the location provided in the CTO study based on additional information not available at the time of the CTO study, Sharyland located the Nazareth station so as to avoid, as much as practicable, certain siting and routing constraints.
98. ERCOT recommends Sharyland's proposed modifications to conductor type and station location.

99. Sharyland's proposed changes are cost effective, consistent with the CTO study, and are reasonable.

Alternative Routes with Less Negative Effect

100. There are no alternative routes or facility configurations that would have a less negative effect on landowners than routes HN S2 and NS S12.

TPWD's Written Comments and Recommendations

101. On December 21, 2010, TPWD filed a letter dated December 17, 2010, containing comments and recommendations regarding the proposed transmission-line project.
102. No modifications to the proposed transmission-line project are required as a result of the recommendations and comments made by TPWD in its December 17, 2010 letter.
103. For the Hereford-to-Nazareth segment, TPWD stated that route HN 2, of which route HN S2 is a modified version, appeared to best minimize impacts to natural resources. For the Nazareth-to-Silverton segment, TPWD stated that route NS 10 appeared to best minimize impacts to natural resources.
104. TPWD's factors of concern in identifying its preferred routes are narrower than the factors that the Commission is required to consider under PURA § 37.056 and P.U.C. SUBST. R. 25.101.
105. Sharyland must comply with all environmental laws and regulations governing threatened, endangered, and state-listed species.
106. Because of Sharyland's inability to access private properties to conduct on-the-ground surveys during the development of the environmental assessments, PBS&J relied on various sources, including information provided by TPWD and the U.S. Fish and Wildlife Service (USFWS).
107. Qualified individuals will conduct a field assessment of the entire lengths of routes HN S2 and NS S12 to identify water resources, cultural resources, potential migratory bird issues, habitat of threatened, endangered, and state-listed species, and habitat of the black-tailed prairie dog that may be impacted as a result of the proposed transmission-line project. Sharyland will identify additional permits that are necessary, obtain all

necessary environmental permits, and comply with applicable permit conditions during construction and operation of the proposed transmission-line project.

108. Sharyland will use best management practices to minimize the potential impact to migratory birds; threatened, endangered, or state-listed species; and black-tailed prairie dog towns.
109. Sharyland's current best management practices are sufficient, and thus no permitted biological monitor is necessary during clearing and construction activities.
110. State-listed threatened species observed during construction will be allowed to safely leave the construction site or will be relocated by a permitted individual to a nearby area with similar habitat that will not be disturbed during construction.
111. Sharyland will take measures to comply with all aspects of the Migratory Bird Treaty Act, which protects, among other species, the western burrowing owl and the mountain plover.
112. An absolute restriction on vegetation clearing activities during the general bird nesting season is neither reasonable nor operationally practical.
113. Mitigation measures relating to raptor protection, herbicide use, flora and fauna disturbance, re-vegetation, and erosion control are part of Sharyland's standard practice.
114. The standard mitigation requirements, included in the ordering paragraphs in this Order, coupled with Sharyland's current practices are reasonable measures for a utility to undertake when constructing a transmission line and adequately address the concerns of the TPWD.
115. This Order addresses only those TPWD recommendations and comments for which there is record evidence.

Need for the Proposed Transmission Line

116. As a CREZ transmission project identified in Docket Nos. 33672, 35665 and 37902, the project is exempt under PURA § 39.203(e) and 39.904(h) and P.U.C. SUBST. R. 25.174(d)(2) from the requirement to consider the factors in PURA § 37.056(c)(1)-(3) and (4)(E).

Financial Commitment

117. Pursuant to the Commission's Order 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 (July 30, 2010), the level of financial commitment by generators for the Panhandle A CREZ is sufficient under PURA § 39.904(g)(3).

II. Conclusions of Law

1. Sharyland is an electric utility as defined in PURA §§ 11.004 and 31.002(6).
2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 37.051, 37.053, 37.054, 37.056, and 39.203(e).
3. SOAH had jurisdiction over this proceeding pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2010).
4. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001, and Commission rules.
5. Sharyland provided proper notice of the application in compliance with PURA § 37.054 and P.U.C. PROC. R. 22.52(a).
6. Sharyland's application meets the filing requirements set forth in P.U.C. SUBST. R. 25.216(g)(2) and (3).
7. Sharyland's application is sufficient.
8. The preferred and alternative routes described in the application and routes HN S2 and NS S12 comply 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 proposed transmission-line project will accomplish the intended results for the CREZ project designated and ordered by the Commission in Docket Nos. 37902 and 36802.

10. Sharyland is entitled to approval of the application as described in the findings of fact, utilizing routes HN S2 and NS S12, taking into consideration the factors set out in PURA § 37.056 and P.U.C. SUBST. R. 25.101.
11. Routes HN S2 and NS S12 are consistent with and in furtherance of the goals and mandates for renewable energy established in PURA § 39.904(a).
12. The proposed transmission-line 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) and P.U.C. SUBST. R. 25.174(d)(2) 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.
13. Pursuant to the Commission's order in Docket No. 37567, the level of financial commitment by generators is sufficient under PURA § 39.904(g)(3) to grant Sharyland's application for an amendment to its CCN in this docket.
14. 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, Sharyland's CCN Nos. 30026, 30114, 30191, and 30192 are amended and Sharyland's application to build a new 345-kV single-circuit transmission line on double-circuit-capable lattice towers that extends from the Hereford station to the Nazareth station and from the Nazareth station to the Silverton station is approved.
2. The proposed transmission-line project will follow routes HN S2 and NS S12, as described in the stipulation. If there is a need to deviate from the modifications described

in the stipulation, then Sharyland shall, in consultation with the affected property owners, construct the proposed transmission-line project in a manner that most closely aligns with routes HN S2 and NS S12.

3. In the event Sharyland or its contractors encounter any archaeological artifacts or other cultural resources during construction of the transmission line, Sharyland shall cease work immediately in the vicinity of the resource and report the discovery to the THC and take action as directed by the THC.
4. Sharyland shall follow the procedures outlined in the following publication 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.
5. Sharyland shall comply with the requirements of the Migratory Bird Treaty Act in connection with construction and maintenance of the project.
6. Sharyland shall use best management practices to minimize the potential impact to migratory birds and threatened or endangered species.
7. Sharyland shall exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within the right-of-way, and shall ensure that such herbicide use complies with the rules and guidelines established in the Federal Insecticide, Fungicide and Rodenticide Act and with the Texas Department of Agriculture regulations.
8. Sharyland shall minimize the amount of flora and fauna disturbed during construction of the transmission line, except to the extent necessary to establish appropriate right-of-way clearance for the transmission line. In addition, Sharyland shall re-vegetate using native species and shall consider landowner preferences in doing so. Furthermore, to the maximum extent practicable, Sharyland shall avoid adverse environmental impacts to sensitive plant and animal species and their habitats as identified by TPWD and USFWS.
9. Once a route is selected, Sharyland shall perform a survey of the area, and if permits are necessary, apply for and comply with all permit conditions. Sharyland 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. Sharyland shall consult with the USFWS for known occupied or potential habitat for endangered species.
10. Prior to construction, an assessment shall be made to verify whether any habitat for endangered or threatened species is present along the route that is approved. If such habitat is present, Sharyland shall seek a permit from USFWS to take endangered species habitat.
 11. Sharyland shall comply with all applicable environmental laws and regulations governing erosion control, endangered species, storm water prevention, and all other environmental concerns.
 12. Sharyland shall implement erosion-control measures as appropriate. Also, Sharyland shall return each affected landowner's property to its original contours and grades unless otherwise agreed to by the landowner or landowners' representatives. Sharyland shall not be required to restore original contours and grades where necessary to ensure the safety or stability of the project's structures or the safe operation and maintenance of the line.
 13. Sharyland shall cooperate with directly affected landowners to implement minor deviations in the approved route to minimize the impact of the transmission line. Any minor deviations 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 that have agreed to the minor deviations. Any agreed minor deviations shall not delay the proposed transmission-line project beyond its Commission-required completion date nor shall any minor deviation add any significant cost to the project.
 14. Sharyland 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, Sharyland 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 to the project. Unless these two conditions are met, this

paragraph does not authorize Sharyland to deviate from the approved route except as allowed by the other ordering paragraphs in this Order.

15. Sharyland shall update the reporting of this proposed transmission-line project on its monthly construction progress report prior to the start of construction to reflect final estimated costs and schedule in accordance with P.U.C. SUBST. R. 25.83(b). In addition, Sharyland shall provide final construction costs, with any necessary explanation for cost variance, after completion of construction and when all charges have been identified.
16. Sharyland shall file in P.U.C. Project No. 37858 information pursuant to P.U.C. SUBST. R. 25.216(f) and the Order on Remand in Docket No. 37902.
17. Sharyland shall be permitted to use right-of-way wider than 175 feet should engineering requirements or compliance with relevant codes and standards for construction and/or operation of the transmission line necessitate a wider right-of-way.
18. Sharyland shall be permitted to use monopole structures if it is more cost effective. In addition, Sharyland shall endeavor to use monopole structures in situations where the right-of-way is extremely constrained, the right-of-way could disproportionately affect a particular landowner, or the cost of the right-of-way acquisition is extremely high.
19. Sharyland shall coordinate with other utilities with regard to each crossing of an existing electric transmission facility by routes HN S2 and NS S12 and in each instance where an existing electric transmission line is paralleled by routes HN S2 and NS S12.
20. Sharyland shall route the proposed transmission-line project to the extent practicable in a manner that minimizes potential adverse impacts on other utilities. When crossings are unavoidable, Sharyland shall work with other utilities to coordinate crossings and operating clearances and to schedule construction at a time that provides minimum disturbance to other utilities.
21. Sharyland shall work in good faith with other utilities to de-energize its transmission facilities when requested by the other utility for line construction or maintenance, subject to obtaining any necessary approvals from ERCOT or SPP.
22. Sharyland shall coordinate with Chamisa Energy Company, LLC, including any successor or assignees, regarding the construction and operation of a viable point of

interconnection with the ERCOT grid for the compressed air energy storage facility to be installed by Chamisa. Sharyland shall route the proposed transmission-line project to the extent practicable in a manner so as to minimize potential adverse impacts on any existing or planned Chamisa facilities. Sharyland and Chamisa shall work together to facilitate a mutually agreeable in-service date for the storage facility.

23. Resolution of this docket was the product of settlement by the signatories. 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 a binding holding or precedent as to the appropriateness of any principle that may underlie the stipulation.
24. 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 22nd day of March 2011.

PUBLIC UTILITY COMMISSION OF TEXAS



BARRY T. SMITHERMAN, CHAIRMAN



DONNA L. NELSON, COMMISSIONER



KENNETH W. ANDERSON, JR., COMMISSIONER