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SOAH DOCKET NO. 473-20-4591
PUC DOCKET NO. 50830

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PUBLIC UTILITY COMMISSION

APPLICATION OF GUADALUPE § BEFORE THE STATE OFFICE
VALLEY ELECTRIC §
COOPERATIVE, INC. TO AMEND §
ITS CERTIFICATE OF § OF
CONVENIENCE AND NECESSITY §
FOR A 138-KV TRANSMISSION §
LINE IN CALDWELL AND §
GONZALES COUNTIES (DELHI-TO- § ADMINISTRATIVE HEARINGS
BLUESTEM 138-KV TRANSMISSION
LINE)

COMMISSION STAFF'S INITIAL BRIEF

Dated: March 11, 2021

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS
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DATE: MARCH 11, 2021

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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION

The applicant, Guadalupe Valley Electric Cooperative, Inc. (GVEC), seeks a certificate for convenience and necessity (CCN) for a proposed 138-kv transmission line (Project) in Caldwell and Gonzales Counties, Texas. The transmission line will be constructed between the Lower Colorado River Authority’s (LCRA) new Bluestem Switching Station, to be located near the existing LCRA Harwood to Waelder 69-kV transmission line between the towns of Harwood and Waelder in Gonzales County, Texas and the proposed new Delhi Substation located in Caldwell County approximately nine miles north of Sand Fork, Texas. The Project will be approximately 9.06 miles to 13.69 miles long, depending on the route selected.

The Staff (Staff) of the Public Utility Commission of Texas (Commission) supports the routing of the Proposed Project along what is designated as Route 16 in the Application.¹ As discussed below, it is Staff’s position that Route 16 best meets the criteria in PURA² § 37.056 and 16 Texas Administrative Code (TAC) § 25.101 when compared to all the proposed routes.

¹ Direct Testimony of Ramya Ramaswamy, Staff Ex. 1 at 12:1-2.

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA).

Staff’s witness, Ms. Ramya Ramaswamy, recommended Route 16 as the route that best meets PURA and the Commission’s criteria.³ GVEC identified Route 12 as the route it believes best meets PURA and the Commission’s criteria.⁴ Texas Parks and Wildlife also recommended Route 12.⁵

A total of 24 routes were originally proposed by GVEC and were included in the notice of the application.⁶ Based on the information provided by GVEC, Staff considers all 24 proposed routes viable. It is Staff’s position that, based on the route alternatives, Route 16 adequately balances the desire to select a route exhibiting reasonable quantitative criteria, while also exhibiting qualitative features consistent with the community values expressed by parties and residents.

PURA and the Commission’s substantive rules list the requirements for approving an application for a CCN and for approving a route for a proposed transmission line, stating that “To approve an application to obtain or amend a CCN, the [Commission] must find that the proposed CCN is necessary for the service, accommodation, convenience, or safety of the public.”⁷ In addition, the plain language of the Commission’s rule grants the Commission authority to “consider and weigh a variety of factors—engineering constraints, costs, grid reliability, and security, along with the criteria in PURA section 37.056—in addition to use of existing rights-of-way in determining the most reasonable route for a transmission line.”⁸ On being given authority to consider and weigh the various routing factors, “the [Commission] may in some cases be

³ Staff Ex. 1 at 10:1-3.

⁴ *Application of Guadalupe Valley Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a 138-kV Transmission Line Project in Caldwell and Gonzales County, Texas* (Application), GVEC Ex. 1, at 10 (May 28, 2020).

⁵ Letter from TPWD to Rachelle Robles dated February 2, 2021, Alford Farms et al. Ex. 3 at 2 (Feb 2, 2021).

⁶ Direct Testimony of Gary L. McClanahan, Jr on Behalf of Guadalupe Valley Electric Cooperative, Inc., GVEC Ex. 3, at 12 (Oct. 7, 2020).

⁷ *Dunn v Pub. Util. Comm’n of Tex*, 246 S.W.3d 788, 791 (Tex. App.—Austin 2008, no pet.).

⁸ *Id.* at 795.

required to adjust or accommodate the competing policies and interests involved”⁹ and “no one factor controls or is dispositive.”¹⁰

A. Route 16 exhibits positive quantitative features.

Staff supports Route 16 because it exhibits certain positive quantitative features. While these quantitative features are discussed in greater detail in Section III (Evaluation of Proposed Routes) below, the quantitative criteria that most favor Route 16 are the following:

- Route 16 is the 3rd least costly of the 24 alternative routes.¹¹
- Route 16 has the 4th fewest habitable structures with 300 feet of the centerline of the 24 alternative routes.¹²
- Route 16 is the 4th shortest route of the 24 alternative routes.¹³

B. Route 16 exhibits positive qualitative features.

Staff supports Route 16 because it performs well with regard to “community values”—a broadly construed term that “is properly interpreted as a shared appreciation of an area or other natural or human resource by members of a national, regional, or local community.”¹⁴ Moreover, “community values may include landowner concerns and opposition.”¹⁵

Staff Witness Ramaswamy considered the feedback provided by landowners at the public meeting held by GVEC.¹⁶ Ms. Ramaswamy also considered impacts to recreational and park areas,

⁹ *Pub Util. Comm'n of Tex. v. Texland Elec. Co*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985).

¹⁰ *Dunn*, 246 S.W.3d at 795.

¹¹ GVEC Ex. 1 at Attachment 3, Estimated Costs.

¹² GVEC Ex. 1 at Table 4-1, Evaluation Criteria 2.

¹³ *Id.* at Evaluation Criteria 1.

¹⁴ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138-kV Transmission Line in Kerr County*, Docket No. 33844, Finding of Fact No. 65 (Mar. 4, 2008).

¹⁵ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-kV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas*, Docket No. 37448, Proposal for Decision at 14 (Mar. 18, 2010).

¹⁶ Staff Ex. 1 at 27:9-25:4.

historical values, aesthetic values, environmental integrity, engineering constraints, costs, and moderation of impact on the affected community and landowners.¹⁷

Consideration of these factors supports the selection of Route 16. Staff will further discuss these and other criteria in Section III below and will respond to the specific questions set out in the Order of Referral and Preliminary Order in Section IV.¹⁸

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter under PURA §§ 32.001, 37.053, 37.056, 37.057, and 16 TAC § 25.101. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding under Tex. Gov't Code § 2003.049 and PURA § 14.053.

GVEC provided proper notice of the application in compliance with PURA § 37.054 and 16 TAC § 22.52(a). In Commission Order No. 3, the administrative law judge (ALJ) found notice to be sufficient.¹⁹ In the Order of Referral and Preliminary Order dated August 18, 2020, the docket was transferred to SOAH.²⁰

III. EVALUATION OF PROPOSED ROUTES

A. Routing Criteria under PURA § 37.056(c)(4)

The Commission may grant a CCN only if it finds that it is necessary for the service, accommodation, convenience, or safety of the public.²¹ PURA § 37.056 provides certain routing criteria to be considered in an electric CCN proceeding, which are analyzed in turn below.²²

¹⁷ *Id.* at 28:8-11.

¹⁸ Order of Referral and Preliminary Order (Aug. 18, 2020) (Preliminary Order).

¹⁹ Order No. 3 Finding Corrected Notice Sufficient (July 17, 2020).

²⁰ Preliminary Order at 1.

²¹ PURA § 37.056(a).

²² PURA § 37.056(c).

1. Community Values

Staff's analysis of community values supports selection of Route 16. In order to facilitate community involvement, GVEC held a public meeting as required by 16 TAC § 22.52(a)(4). The public meeting was conducted on March 4, 2020.²³ The respondents were asked to rank criteria in routing the project that they considered to be the most important. As acknowledged at the hearing by GVEC, the criteria that was ranked as most important to members of the community was maximizing distance from residences.²⁴ The most obvious factor related to maximizing distance from residences is the ranking of routes in terms of how many habitable structures are impacted by a route. Route 16 has 9 habitable structures within 300 feet of the centerline, the 4th fewest of all the alternative routes.²⁵ The route preferred by GVEC has 14 habitable structures within 300 feet of the centerline, ranking 17th.²⁶ The only routes that rank higher than Route 16 in this category are Routes 1, 2, and 4, each of which are significantly more expensive than Route 16.²⁷

2. Park and Recreational Areas

There are no parks or recreational areas located within 1,000 feet of the centerline of any of the proposed alternative routes listed in the route data provided by GVEC.²⁸ According to GVEC, no significant impacts to the use of the parks and recreation facilities located within the study area are anticipated from any of the alternative routes.²⁹

²³ GVEC Ex. 3 at 15.

²⁴ Tr. at 55:9-13 (Cross Examination of McClanahan) (Feb 23, 2021).

²⁵ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 2.

²⁶ *Id.*

²⁷ Staff Ex. 1 at 38:6-10.

²⁸ Staff Ex. 1 at 28:20-23.

²⁹ GVEC Ex. 1, Attachment 4 at 112.

3. Historical Values

There are two recorded archeological sites and three cemeteries in the study area.³⁰ Route 16 impacts neither of the archeological sites nor does it cross any of the cemeteries.³¹ Route 12, the route recommended by GVEC and some intervenors, crosses archeological site 41CW185.³² Archeological site 41CW185 is the remains of an abandoned mid-to late-1900s farmstead.³³

4. Aesthetic Values

Ms. Ramaswamy testified that the negative impact on aesthetic values from constructing Route 16 is comparable to the negative impact from constructing other alternative routes.³⁴ According to the data provided by GVEC, three factors considered in the aesthetic values category are: (1) estimated length of route within foreground visual zone of Interstate, US and State highways, (2) estimated length of route within foreground visual zone of FM/RM roads and (3), estimated length of route within foreground visual zone of parks/recreational areas.³⁵ Combining these categories, Route 16 has approximately 1.53 miles within foreground visual zones, which is tied for the lowest among any of the alternative routes.³⁶ Route 12, the route recommended by GVEC and some intervenors, has approximately 8.91 miles within foreground visual zones, which ranks 20th out of 24 routes.³⁷ Further, Route 16 is among the shortest routes, only 1.01 miles longer than the shortest route, which would help mitigate aesthetic impacts.³⁸ For these reasons, it is Staff's position that Route 16 is preferable to the other routes from an aesthetic impact perspective.

³⁰ Staff Ex. 1 at 29:4-18.

³¹ *Id.*

³² GVEC Ex. 1 at 20.

³³ *Id.*

³⁴ Staff Ex. 1 at 30:1-9.

³⁵ GVEC Ex. 1 at Table 2-6.

³⁶ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 29, 30 and 31.

³⁷ Tr. at 68:21-69:8 (Cross Examination of McClanahan) (Feb 23, 2021).

³⁸ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 1.

5. Environmental Integrity

The proposed project is expected to cause only short-term effects to water, soil, and ecological resources during the initial construction phase.³⁹ Route 16 is among the shortest routes, only 1.01 miles longer than the shortest route, which would help mitigate environmental impacts.⁴⁰ Route 16, similar to all of the alternative routes, performs very well in its utilization of compatible rights-of-way (ROW) with approximately 94% of its length paralleling or utilizing compatible ROW.⁴¹ As noted by Texas Parks and Wildlife Department (TPWD), Route 16 does not have any length across U.S. Fish and Wildlife Service mapped National Wetlands Inventory wetlands and crosses no known occupied habitat of federally listed endangered or threatened species.⁴²

After reviewing the information provided by GVEC and TPWD, Staff believes that Route 16 is acceptable and comparable to the other routes from an environmental perspective.

B. Routing Criteria under 16 TAC § 25.101(b)(3)(B)

The relevant rule presents additional criteria to be considered in an electric CCN, those criteria are discussed below.⁴³

1. Engineering Constraints

Ms. Ramaswamy noted that GVEC did not identify any specific engineering constraints along any of the alternative routes.⁴⁴

³⁹ Staff Ex. 1 at 31:1-2.

⁴⁰ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 1.

⁴¹ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 9.

⁴² Alford Farms et al. Ex. 3 at 3.

⁴³ 16 TAC § 25.101.

⁴⁴ Staff Ex. 1 at 31:20-23.

According to GVEC, minimal impacts on electronic communications are anticipated from construction of the Project.⁴⁵ No AM radio transmitters were identified within 10,000 feet of the alternative routes.⁴⁶ Many of the alternative routes, including Route 16, are within 2,000 feet of at least one FM radio transmitter, microwave tower, or other similar electronic installation.

According to GVEC, no significant impacts to aviation operations within the study area are anticipated from construction of the Project.⁴⁷ There are no FAA-registered public or military airports having a runway less than 3,200 feet within 10,000 feet of any of the primary alternative routes.⁴⁸ However, there is one private airstrip in the study area that is located within 10,000 feet of Routes 1 through 12.⁴⁹ There are no private airstrips located within 10,000 feet of Route 16.⁵⁰

2. Cost

Route 16 is the 3rd least expensive route, with the transmission line portion of the project estimated to \$8,925,765.23.⁵¹ According to GVEC, regardless of which alternative route is selected, in addition the transmission line costs, the Project will include approximately \$13.65 million in substation and switching station costs.⁵² Consequently, taking into account the substation and switching stations costs, in addition to the transmission line costs, Route 16 performs well overall. In addition, there is only a 4 percent difference in cost between Route 12 and Route 16.⁵³

⁴⁵ GVEC Ex. 1, Attachment 4 at 113.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ GVEC Ex. 1, Attachment 4 at 113.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ GVEC Ex. 1 at Attachment 3, Estimated Costs.

⁵² Staff Ex. 1 at 32:8-12.

⁵³ The estimated cost of Route 12 is \$8,030,595.71 (transmission line) plus \$13,650,000 (substation costs) for a total of \$21,680,595.71. The estimated cost of Route 16 is \$8,925,765.93 (transmission line) plus \$13,650,000 (substation costs) for a total of \$22,575,765.93. The percentage difference between \$21,680,595.71 and \$22,575,765.93 is 4.05%

3. Moderation of Impact on Affected Community and Landowners

At the open house meeting that GVEC held on March 4, 2020, GVEC encouraged attendees to ask questions and submit questionnaires.⁵⁴ As discussed above, the most important factor to member of the community who submitted questionnaires was maximizing distance from residences.⁵⁵ Route 16 impacts only nine habitable structures, the 4th fewest of all the alternative routes.⁵⁶

Staff reviewed and analyzed the application and its attachments, the direct testimonies, supplemental testimonies, and statements of position filed in the docket, as well as other filed responses, requests for information, and comments. As addressed above in Section III.A, Route 16 is the 3rd least expensive route, has the 4th fewest habitable structures with 300 feet of the centerline, and is the 4th shortest route overall. To further moderate impact, Staff recommends the addition of language in the ordering paragraphs requiring the utility to work with directly affected landowners to implement minor deviations from the approved route in order to minimize any impact on those landowners, similar to ordering paragraphs that have been adopted in the past.⁵⁷

4. Use of Compatible Rights-of-Way, Paralleling Existing Rights-of-Way

The paralleling of existing transmission line ROW, existing public roads, highways and railways for all 24 routes ranges from 90.59% of total length to 98.31% of total length.⁵⁸ The percentage of Route 16's length that parallels or utilizes existing transmission or distribution line ROW, other existing compatible ROW (highways, roads, railways, etc.), and apparent property

⁵⁴ GVEC Ex. 3 at 15.

⁵⁵ Tr. at 55:9-13 (Cross Examination of McClanahan) (Feb 23, 2021).

⁵⁶ GVEC Ex. 1 at Table 4-1, Evaluation Criteria 2.

⁵⁷ See *Application of Electric Transmission Texas, LLC to Amend Certificates of Convenience and Necessity for the Stewart Road 345-kV Transmission Line in Hidalgo County*, Docket No. 47973, Ordering Paragraph No. 11 (Feb. 13, 2019) (adopting similar ordering language).

⁵⁸ Staff Ex. 1 at 35:15 – 36:1.

boundaries is 93.92% of its length.⁵⁹ One of the main benefits of paralleling compatible ROW is to minimize the impact on landowners. In this proceeding, with the exception of Routes 1, 2, and 4, the routes with a higher paralleling percentage also directly impacted more habitable structures.⁶⁰ Routes 1, 2, and 4 were all at least one million dollars more expensive than Route 16.⁶¹ Staff carefully weighed these factors and concluded that based on the information outlined above, Route 16 is the superior route.

5. Prudent Avoidance

The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."⁶² Limiting exposure to electric and magnetic fields can be accomplished by choosing a route that has fewer habitable structures in close proximity to the route.

The alternative routes impact between 3 and 17 habitable structures. Route 16 impacts 9 habitable structures, making it 4th overall.⁶³ Route 12, recommended by GVEC and certain intervenors, impacts 12 habitable structures, ranking 17th overall.⁶⁴ Based on the above definition, Staff supports Route 16 as the route that best adheres to the concept of prudent avoidance.

IV. PRELIMINARY ORDER ISSUES RELATING TO THE APPLICATION

⁵⁹ *Id.*

⁶⁰ GVEC Ex. 1 at Table 4-1.

⁶¹ GVEC Ex. 1 at Attachment 3, Estimated Costs.

⁶² 16 TAC § 25.101(a)(6).

⁶³ Staff Ex. 1 at 36:17 – 37:1.

⁶⁴ *Id.*

A. Application and Route Adequacy

- 1. Is GVEC's application to amend its CCN adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?**

The original application included 24 routes that utilized all 45 primary alternative route segments and provided geographic diversity.⁶⁵ Based on the information provided by GVEC, Staff considers all 24 routes viable. No party challenged route adequacy. Therefore, it is Staff's position that GVEC has presented an adequate number of reasonably differentiated alternative routes in its application.

B. Need and Project Alternatives

Pursuant to a settlement agreement with GVEC Staff is not contesting, and no other party has contested, the need for the project in this proceeding.

C. Route

- 2. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?⁶⁶**

Consistent with the above discussion, Staff recommends approval of Route 16 after weighing the factors set forth in PURA § 37.056(c)(4) and 16 TAC § 25.101(b)(3)(B).⁶⁷ As is outlined in the above discussion, Route 16 best balances the criteria to be considered and has many advantages over the other routes.⁶⁸

⁶⁵ Staff Ex. 1 at 14:1-3

⁶⁶ Preliminary Order at 5.

⁶⁷ Staff Ex. 1 at 10:13-15.

⁶⁸ *Id.* at 39:19-40:7.

3. Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?⁶⁹

Although some intervenors assert that routes other than Route 16 would have less of a negative impact on landowners; however, the evaluation of this criterion is subjective and Staff recommends that Route 16 adequately balances the concerns regarding the impact on landowners with the other statutory criteria. Ms. Ramaswamy further recommended that the Commission include language that would allow the utility to make minor deviations under certain conditions if necessary.⁷⁰

4. If alternative routes or facility configurations are considered due to individual landowner preference:

a.) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?

b.) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?⁷¹

No affected landowners have made financial contributions to offset additional costs associated with any requested accommodations.

D. Texas Parks and Wildlife Department

5. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:

⁶⁹ Preliminary Order at 5.

⁷⁰ Staff Ex. 1 at 12:16-20.

⁷¹ Preliminary Order at 4-5.

a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?

b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?

c) What other disposition, if any, should be made of any recommendations or comments?

d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.⁷²

Although TPWD did not file its recommendation until after Ms. Ramaswamy filed her testimony, Ms. Ramaswamy recommended several mitigation measures that address most of TPWD's concerns.⁷³ These measures include the following proposed ordering paragraphs:⁷⁴

1. GVEC must follow the procedures to protect raptors and migratory birds as outlined in the following publications: *Reducing Avian Collisions with Power Lines: The State of the Art in 2012*, Edison Electric Institute and Avian Power Line Interaction Committee, Washington, D.C. 2012; *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*, Edison Electric Institute, Avian Power Line Interaction Committee, and the California Energy Commission, Washington, D.C. and Sacramento, CA 2006; and *Avian Protection Plan Guidelines*, Avian Power Line Interaction Committee and United States Fish and Wildlife Service, April 2005. GVEC must take precautions to avoid disturbing occupied nests and take steps to minimize the burden of construction on migratory birds during the nesting season of the migratory bird species identified in the area of construction.
2. GVEC must exercise extreme care to avoid affecting non-targeted vegetation or animal life when using chemical herbicides to control vegetation within rights-of-way. GVEC must ensure that the use of chemical herbicides to control vegetation within the rights-of-way complies with rules and guidelines established in the Federal Insecticide Fungicide and Rodenticide Act and with Texas Department of Agriculture regulations.

⁷² Preliminary Order at 5.

⁷³ Staff Ex. 1 at 11:3-12:5.

⁷⁴ *Id.*

3. GVEC must minimize the amount of flora and fauna disturbed during construction of the transmission lines, except to the extent necessary to establish appropriate right-of-way clearance for the transmission lines. In addition, GVEC must revegetate, using native species and must consider landowner preferences and wildlife needs in doing so. Furthermore, to the maximum extent practical, GVEC must avoid adverse environmental influence on sensitive plant and animal species and their habitats, as identified by the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service.
4. GVEC must use best management practices to minimize the potential impacts to migratory birds and threatened or endangered species.

E. Other Issues

6. **Are the circumstances for this line such that the seven-year limit discussed in section III of this order should be changed?**⁷⁵

GVEC has not described any circumstances that would support modifying the seven-year deadline for GVEC to commercially energize the transmission line.⁷⁶

VI. CONCLUSION

Based on the foregoing discussion, Staff supports the adoption of Route 16. Specifically, Route 16 is comparable to, or superior to, the other alternative route options based on the evidence and the evaluation of the qualitative and quantitative criteria.

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⁷⁵ Preliminary Order at 5.

⁷⁶ Staff Ex. 1 at 32:2-3.

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 11, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rustin Tawater
Rustin Tawater