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PUC DOCKET NO. 59182
SOAH DOCKET NO. 473-26-10397

**JOINT APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY LLC AND
LCRA TRANSMISSION SERVICES
CORPORATION TO AMEND THEIR
CERTIFICATES OF CONVENIENCE AND
NECESSITY FOR THE BIG HILL
SUBSTATION TO SAND LAKE SWITCH 765-
KV TRANSMISSION LINE PROJECT IN
CRANE, CROCKETT, IRION, PECOS,
REAGAN, REEVES, SCHLEICHER, TOM
GREEN, UPTON, AND WARD COUNTIES**

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**BEFORE THE
PUBLIC UTILITY
COMMISSION
OF TEXAS**

--- AND ---

PUC DOCKET NO. 59475
SOAH DOCKET NO. 473-26-16349

**APPLICATION OF ONCOR ELECTRIC
DELIVERY COMPANY LLC AND LCRA
TRANSMISSION SERVICES CORPORATION
TO AMEND THEIR CERTIFICATES OF
CONVENIENCE AND NECESSITY FOR THE
BELL COUNTY EAST SWITCH TO BIG HILL
SUBSTATION 765-KV TRANSMISSION LINE
PROJECT IN BELL, BURNET, CONCHO,
CORYELL, LAMPASAS, LLANO, MASON,
MCCULLOCH, MENARD, MILAM, MILLS,
SAN SABA, SCHLEICHER, TOM GREEN,
AND WILLIAMSON COUNTIES**

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**BEFORE THE
PUBLIC UTILITY
COMMISSION
OF TEXAS**

**KEVIN KENNEDY'S APPEAL OF SOAH ORDER NO. 35
AND REQUEST FOR COMMISSION-DIRECTED INDEPENDENT TECHNICAL
INVESTIGATION AND FORENSIC AUDIT**

I. INTRODUCTION AND SUMMARY OF APPEAL

Pro se intervenor Kevin Kennedy, (“Mr. Kennedy”) appeals the portion of SOAH Order No. 35 denying his September 20, 2026 Motion for an Independent Technical Investigation and Forensic Audit of the Electric Reliability Council of Texas (“ERCOT”) modeling used in the Permian Basin Reliability Plan (“PBRP”) ¹. The appeal is brought under 16 Tex. Admin. Code (TAC) § 22.123.

The State Office of Administrative Hearings (“SOAH”), Administrative Law Judges (ALJs) did not reject the technical substance of Mr. Kennedy’s Motion. They made no finding that the PBRP model was valid, no finding that the model complied with applicable reliability standards, and no finding that the requested investigation was unnecessary. Instead, the ALJs denied the Motion because “SOAH ALJs do not possess self-initiating regulatory or investigative power.” ²

Footnote 4 of Order No. 35 is therefore central to this appeal. The ALJs cited Texas Government Code §§ 2003.021 and 2003.049 for SOAH’s institutional limitations and then expressly recognized: “*Under the Public Utility Regulatory Act, the Commission has complete oversight and exclusive jurisdiction over ERCOT. See Tex. Util. Code § 39.151.*” ³

That footnote identifies that SOAH lacks the self-initiating investigative authority necessary to conduct the requested audit; however, the Commission possesses express statutory oversight, investigative, information-gathering, inspection, and audit authority over ERCOT. For all intents and purposes, the ALJs said: Kevin, it’s the Commission not the ALJs who has the ability to confirm whether or not ERCOT’s PBRP model is good, correct and in compliance with state and federal standards.

The proper response is therefore not to leave the technical questions unanswered, but for the Commission to exercise its own authority and obligation—to direct an appropriate independent investigation—before a final determination is made on Issue No. 11.

¹ Kennedy Motion (59475-6589)

² SOAH Order No. 35 at 3 (59475-6597)

³ SOAH Order No. 35 at 3, *Id.* n.4 (59475-6597)

II. SOAH ORDER NO. 35 AND ISSUE 11 MAKES THE INVESTIGATION MATERIAL TO THE REMAND

On September 18, 2026, the Commission remanded this proceeding to SOAH to address Preliminary Order Issues 11 and 13. Order No. 35 states Issue 11 as follows:

*“Are the proposed transmission facilities necessary to meet state or federal reliability standards?”*⁴

At the same time, the ALJs stated that they will not reopen the evidentiary record and instead ordered briefing, with briefs due October 7, 2026, and responses due October 19, 2026.⁵

Mr. Kennedy's Motion directly concerns the foundation of Issue 11: whether the ERCOT modeling relied upon to establish reliability need was valid, appropriately constructed, and consistent with the applicable reliability-modeling requirements. The Motion identifies specific technical questions concerning model construction, load and generation assumptions, model consistency, topology, steady-state analysis, and potential circularity between the PBRP and subsequent planning cases, such as the 2024-RTP and 2025-RTP. The requested investigation seeks verification, not a predetermined conclusion.

The resulting procedural problem is straightforward:

The Commission has required SOAH to determine whether the facilities are necessary to meet state or federal reliability standards. SOAH has stated that it lacks the investigative power needed to conduct the Motion's requested technical inquiry. The Commission, however, has that power. The foundational modeling question is material to Issue 11, so denying the only avenue for independent investigation while deciding Issue 11 on a closed record would materially affect the course of this proceeding in a manner contrary to the purpose of the Commission, which is to protect the ratepayers.

⁴ SOAH Order No. 35 at 2

⁵ SOAH Order No. 35 at 2

III. SOAH ORDER NO. 35 IS APPEALABLE UNDER 16 TAC § 22.123

16 TAC § 22.123(a)(1) provides:

“Appeals are available for any interim order of the presiding officer that immediately prejudices a substantial or material right of a party or materially affects the course of the hearing. Appeals are not available for evidentiary rulings.”

16 TAC § 22.123(a)(3) further provides:

“An appeal must specify the reasons why the interim order is unjustified or improper and how it immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.”

The ruling in SOAH Order No. 35 denying the request for an audit is not an evidentiary ruling. The denial materially affects the course of the hearing because it terminates the requested independent technical investigation while SOAH proceeds to decide Issue 11 on a closed evidentiary record. The ruling rests on the jurisdictional allocation of investigative authority between SOAH and the Commission and leaves unresolved the question of whether the Commission should exercise the authority to investigate, which SOAH expressly states it does not possess.

16 TAC § 22.123(a)(6) also provides:

“Upon the filing of an appeal, the Office of Policy and Docket Management must send a separate ballot to each commissioner to determine whether the commission will consider the appeal at an open meeting. Untimely motions will not be balloted.”

Mr. Kennedy therefore respectfully requests that this appeal be balloted timely and placed before the Commission, and that it not be disregarded.

IV. SOAH'S LACK OF INVESTIGATIVE POWER DOES NOT LIMIT THE COMMISSION'S AUTHORITY

Order No. 35 relies on Texas Government Code §§ 2003.021 and 2003.049 to explain SOAH's role. Section 2003.021(a) establishes SOAH's purpose, in part, as separating the adjudicative function from investigative, prosecutorial, and policymaking functions and providing an independent forum for adjudicative hearings in the executive branch.

That separation does not extinguish the investigative function. It identifies why the function belongs elsewhere. Order No. 35 itself identifies the Commission as the body having complete oversight and exclusive jurisdiction over ERCOT.

Accordingly, Mr. Kennedy does not ask the Commission to compel SOAH to become a regulatory investigative agency. He asks the Commission to recognize the jurisdictional distinction identified by the ALJs and exercise the Commission's own statutory authority and obligation to resolve the technical reliability questions, whose answers are materially necessary to the Commission's remand and Issue 11.

V. PURA § 39.151 EXPRESSLY PLACES OVERSIGHT OF ERCOT'S RELIABILITY FUNCTIONS WITH THE COMMISSION

PURA § 39.151(a)(2) identifies a core function of the independent organization:

“ensure the reliability and adequacy of the regional electrical network;”

PURA § 39.151(d) then provides:

“The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate those responsibilities to an independent organization. An independent organization certified by the commission is directly responsible and accountable to the commission.”

The same PURA § 39.151(d) subsection further provides:

“The commission has complete authority to oversee and investigate the independent organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The independent organization shall fully cooperate with the commission in the commission's oversight and investigatory functions.”

This language is directly responsive to Order No. 35. The Legislature made ERCOT directly responsible and accountable to the Commission and gave the Commission complete authority to investigate ERCOT's operations as necessary to determine whether ERCOT adequately performs its statutory functions—including ERCOT's responsibility to *“ensure the reliability and adequacy of the regional electrical network”*.

VI. PURA § 39.151(D-4) EXPRESSLY AUTHORIZES THE AUDIT REQUESTED

PURA § 39.151(d-4) provides, in part, that the Commission may:

“(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;”

“(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;”

“(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;”

Subsection (d-4)(3) is especially significant. The Legislature did not limit Commission audits to ERCOT's finances. It expressly authorized audits of ERCOT's *“performance of the functions prescribed by this section.”* ---- Ensuring reliability is one of those functions under § 39.151(a)(2). -----

The Commission therefore possesses express statutory authority to audit the performance of the ERCOT reliability function implicated by the PBRP. The word “may” gives the Commission discretion as to whether and how to exercise that authority; it does not make an audit mandatory merely because a party requests one. Where the Commission itself has remanded Issue 11 for a determination of state or federal reliability necessity, § 39.151(d-4) supplies the precise investigative mechanism needed to resolve a material technical question that SOAH has stated it cannot investigate.

**VII. PURA § 39.1514 PROVIDES A PROCEDURAL VEHICLE FOR A
COMMISSION DIRECTIVE TO ERCOT**

PURA § 39.1514(a) provides:

“The commission may not use a verbal directive to direct an independent organization certified under Section 39.151 to take an official action. The commission may direct the organization to take an official action only through: (1) a contested case; (2) rulemaking; or (3) a memorandum or written order adopted by a majority vote.”

This proceeding is a contested case. Thus, if the Commission determines that ERCOT should produce modeling files, underlying assumptions, model genealogy, data reconciliations, or other technical material necessary for an independent audit, PURA supplies a mechanism for the Commission to issue that directive.

**VIII. THE PERMIAN BASIN RELIABILITY STATUTE MAKES THE ACCURACY
OF THE UNDERLYING RELIABILITY DETERMINATION MATERIAL
AND NECESSARY**

PURA § 39.166(a) provides:

“The commission shall direct the independent organization certified under Section 39.151 for the ERCOT power region to: (1) identify each region in which transmission capacity is insufficient to meet the region's existing and forecasted electrical load, as reasonably determined by the certificated transmission service provider; and (2) develop a reliability plan to serve existing and forecasted electrical load in the identified region.”

PURA § 39.166(b) provides:

“The commission shall develop a plan to implement each reliability plan adopted under Subsection (a) to ensure timely development and approval of necessary transmission service improvements.”

The Permian Basin-specific directive enacted in HB 5066 required the Commission to direct ERCOT to develop a reliability plan for the Permian Basin under § 39.166. Although that

Permian-specific section contained an expiration provision, the operative statutory framework under which the PBRP was initiated is relevant to understanding the purpose of the plan and the Commission's role.

The Legislature's use of the term 'necessary transmission service improvements' is important. The statutory scheme contemplates identification of insufficiency, development of a reliability plan, and implementation of necessary improvements. Issue 11 presents essentially the same foundational question in this CCN proceeding: whether the proposed Import Path 2 facilities are necessary to meet state or federal reliability standards.

The HB 5066 mandate to identify necessary transmission improvements, ---coupled with the Commission's responsibility to the ratepayers and its authority to conduct audits of ERCOT's operations---, requires the Commission to investigate the substantial and compelling evidence that ERCOT's PBRP modeling may not comply with all state and federal standards.

IX. THE EVIDENCE THAT ERCOT'S PBRP MODEL WARRANTS AN AUDIT IS SUBSTANTIAL AND COMPELLING

The PBRP modeling methodology warrants independent review because several identified assumptions appear potentially inconsistent with state and federal standards, as well as fundamental engineering principles, including data consistency, contemporaneous inputs, model validation, completeness, and controlled sensitivity analysis. The numerous and valid concerns must not be ignored, which are described in great detail in Mr. Kennedy's Motion, as well as in many other documents and filings in the evidentiary records, in particular Mr. Kennedy's Reply Exceptions to the Proposal for Decision,⁶ Judy Graci's Reply to Applicant's Exceptions to Proposal for Decision.⁷

Consistent data:

A system-wide reliability model should use internally consistent load, generation, and topology assumptions. Using materially newer load forecasts in one region while retaining materially older assumptions elsewhere could distort system-wide power flows.

⁶ Kennedy Reply Exceptions to PFD (59475-6547)

⁷ Graci Reply Exceptions to PFD (59475-6557)

Spatial and temporal consistency:

Load and generation forecasts should be representative of the same planning horizon and geographic scope. Mixing forecast vintages or selectively updating one region can create an artificial transfer requirement.

Model completeness:

Major transmission decisions should be based on a model that reasonably represents the relevant system, including material generation, load, and transmission alternatives—not simply the portion of the system experiencing the largest forecast change.

Model validation:

Planning models should be checked against actual system behavior and material discrepancies investigated before relying on model results for major reliability decisions. TPL-001-5.1 expressly requires planning models to use MOD-032-consistent data and represent known projected system conditions.

Controlled alternatives:

Where a major transmission corridor's need or capacity depends on the modeled topology, reasonable alternative topologies should be tested while holding other assumptions constant. This is particularly relevant to the 765-kV Import Path 2 and the later-developed Drill Hole–Sand Lake–Solstice connection, which could provide a more cost-effective means to serve power needs at Sand Lake.

Reproducibility and auditability:

The assumptions, data sources, forecast vintages, model changes, contingencies, and validation steps should be sufficiently documented to allow an independent engineer to reproduce and test the conclusions.

The central engineering question is therefore not simply whether ERCOT's PBRP model produced violations, but whether those violations and the resulting transmission recommendations were drawn from a complete, contemporaneous, internally consistent, robust, and independently validated set of system assumptions.

X. STATE, FEDERAL AND NERC RELIABILITY REQUIREMENTS SUPPORT INDEPENDENT TECHNICAL VERIFICATION

Mr. Kennedy's Motion does not ask the Commission to prejudge whether ERCOT violated a NERC Reliability Standard. It asks for an independent technical determination of whether the modeling relied upon in the PBRP was valid and appropriately constructed and whether the relevant state and federal planning requirements were satisfied.

The Motion specifically identifies NERC Reliability Standard TPL-001-5.1 and the MOD family of modeling standards as relevant to that inquiry. TPL-001-5.1 governs transmission system planning performance and requires planning entities to maintain models for Planning Assessment studies using data consistent with the applicable modeling-data standard and representing projected system conditions. MOD-032 addresses data for power system modeling and analysis. NERC identifies MOD-032-1 as a mandatory standard subject to enforcement; NERC also identifies model-validation requirements within the MOD family.

These federal reliability standards provide the technical and regulatory framework against which the Commission's Issue 11 inquiry must be evaluated.

The Commission's audit should:

- (1) determine whether the PBRP modeling complied with the HB 5066 mandate to consider all available TSP load forecasts, and
- (2) determine whether the PBRP modeling complied with all TPL-001-5.1 modeling requirements for reliability analysis, and
- (3) determine whether the PBRP modeling is sufficiently reliable and compliant with state and federal standards to support a CCN reliability need determination, and
- (4) if an independent review identifies evidence of a potential violation of an applicable mandatory Reliability Standard, the Commission may refer or coordinate that matter with the appropriate federal or regional compliance authority.

XI. ERCOT ITSELF QUESTIONED THE VALIDITY OF THE PBRP MODELING FOR DETERMINATION OF IMPORT NEEDS

In the Executive Summary of the July 25, 2024 PBRP, ERCOT states: “*ERCOT expects that the EHV facilities identified in this Permian Basin Reliability Plan could differ from the EHV facilities that would serve the Permian Basin region identified in the 2024 RTP solely on account of this more comprehensive scope.*”⁸

ERCOT acknowledges that the PBRP is not a comprehensive study and, as such, the 765-kV import paths identified by that study would be expected to change under a properly comprehensive study. Yet, despite this acknowledgment, the Oncor Electric Delivery Company LLC and LCRA Transmission Services Corporation (collectively, “Applicants”) rely solely on the PBRP and HB 5066 in their CCN application. This appears to be because later planning studies, like the 2024-RTP, never tested or ascertained whether the PBRP import paths ---and specifically Import Path 2--- were necessary to solve reliability violations. The later studies simply placed the PBRP import paths into the base case, as if they were existing facilities that may function as any other existing asset within the grid topology, but the 2024-RTP never proves necessity.

This is the credible circularity dilemma described in the Motion.

The PBRP modeling may lack the spatial and temporal consistency necessary to provide accurate results and the 2024-RTP did not test and specifically determine the necessity of Import Path 2 to resolve violation of state or federal reliability standards.

---Why did the PBRP not have a comprehensive scope?---

XII. THE COMMISSION SHOULD EXERCISE ITS AUTHORITY BEFORE ISSUE 11 IS FINALLY DETERMINED

The unusual procedural posture makes Commission action particularly important. The Commission remanded Issue 11 to determine whether the facilities are necessary to meet state or federal reliability standards. SOAH will not reopen the evidentiary record. Mr. Kennedy presented a detailed request for an independent examination of the model underlying the asserted reliability need. SOAH denied that request solely because SOAH lacks self-initiating investigative power and expressly identified the Commission's oversight authority over ERCOT.

⁸ PBRP (App. Ex. 1 (Application), att. 5 (PBRP) at 1878)

The Commission need not determine in this appeal that the PBRP model was defective, nor that ERCOT violated a NERC Reliability Standard. The narrower question is whether substantial, technically specific concerns identified by Mr. Kennedy about the reliability model should be independently tested before the model is relied upon to resolve Issue 11.

An independent audit is especially appropriate because the requested inquiry can be defined objectively: obtain the relevant PBRP and contemporaneous planning models; reconcile material load, generation, topology, and forecast assumptions; trace model genealogy; determine what steady-state and stability studies were performed; test whether later planning cases assumed the disputed transmission facilities as starting topology; and prepare a compliance matrix addressing the reliability requirements identified in the Motion. Those tasks test the evidence without presuming the outcome.

XIII. A COMMISSION DENIAL OF THIS APPEAL COULD BE FOUND TO BE ARBITRARY AND CAPRICIOUS

A denial of this request without a meaningful examination of the material modeling issues identified herein, and elsewhere in the record, could constitute arbitrary and capricious agency action. Under the Texas Administrative Procedure Act, Tex. Gov't Code §2001.174(2)(F), a reviewing court must reverse or remand an agency decision when substantial rights have been prejudiced and the decision is “arbitrary or capricious” or constitutes an abuse or clearly unwarranted exercise of discretion. Texas courts have explained that an agency acts arbitrarily when it fails to consider a relevant factor, considers an irrelevant factor, or reaches a completely unreasonable result after considering the relevant factors.⁹ Courts have further recognized that arbitrary agency action can include decisions made without regard to the facts or without a rational connection between the facts and the agency's decision, and that an agency must engage in reasoned decision-making.

Here, the Commission is presented with specific, technically testable questions concerning the accuracy, completeness, temporal and spatial consistency, validation, and engineering assumptions underlying ERCOT's PBRP model, including questions specific to Issue 11 regarding the need for Import Path 2 to solve violations of state or federal reliability standards.

⁹ City of El Paso v. Public Utility Commission of Texas, 883 S.W.2d 179, 184 (Tex. 1994)

A decision simply declining to investigate these issues—without addressing the identified evidence, explaining why the underlying models need not be examined, or establishing an adequate factual basis for concluding that the PBRP results can be relied upon—could leave the Commission's decision vulnerable to challenge under § 2001.174. The Texas Supreme Court has also recognized that an agency decision may be arbitrary and capricious even where substantial evidence might otherwise exist, including where the agency's process results in prejudice to substantial rights.¹⁰

Accordingly, the Commission should either undertake the requested independent technical review or make findings, based upon the evidentiary record, that specifically address the material modeling concerns raised herein and explain the factual and technical basis for declining to investigate them.

XIV. REQUESTED RELIEF

Mr. Kennedy respectfully requests that the Commission:

1. timely ballot his appeal and placed it before the Commission for decision;
2. grant his appeal of the portion of SOAH Order No. 35 denying his Motion filed on September 20, 2026;
3. find that the ALJs' stated lack of self-initiating investigative authority does not restrict the Commission's independent oversight, investigatory, and audit authority under PURA § 39.151;
4. pursuant to PURA § 39.151(d-4), initiate an independent technical investigation and forensic audit of the ERCOT modeling used to support the PBRP and the asserted need for Import Path 2, or otherwise require an audit structured to provide independent verification;
5. abate any further action on all five PBRP 765-kV import path projects until the audit is completed, has been made available to the public, has been thoroughly scrutinized through appropriate public discourse and debate, and the Texas Legislature has been allowed to take any legislative action deemed necessary, based on the audit findings.

¹⁰ Tex. Health Facilities Comm'n v. Charter Medical-Dallas, Inc., 665 S.W.2d 446, 454 (Tex. 1984)

6. pursuant to PURA § 39.1514 and other applicable authority, direct ERCOT to produce the models, input data, assumptions, topology, contingency files, study cases, model-development records, and other technical materials reasonably necessary for that investigation;
7. direct that the investigation evaluate the technical questions identified in Mr. Kennedy's September 20, 2026 Motion, including the applicability of TPL-001-5.1 and relevant MOD modeling and validation requirements, without prejudging whether a violation occurred;
8. direct that Mr. Kennedy's September 20, 2026 Motion be considered as the framework for the independent technical investigation;
9. determine whether the PBRP modeling fully complied with the state requirements established by HB 5066, including the requirement to "consider the historical load, forecasted load growth, and additional load currently seeking interconnection, including load for which the electric utility has yet to sign an interconnection agreement, as determined by the electric utility with the responsibility for serving the load";
10. if the investigation identifies evidence of a potential violation of an applicable mandatory NERC Reliability Standard, take or refer appropriate action through the applicable reliability-compliance process;
11. stay, modify, or otherwise coordinate the remand schedule as necessary so that Preliminary Order Issue No. 11 is not finally determined without consideration of the final findings of the Commission-directed technical review; and
12. grant such other relief as the Commission determines appropriate.

XV. PRAYER

The ultimate audit question is not whether ERCOT's 765-kV solution can work. A person can get groceries in a Ford F-350 Super Duty pick-up. That plan may 'work', but it does not mean that a one-ton vehicle is necessary to haul the groceries. The question that must be answered, in order to truthfully resolve Issue 11, is whether ERCOT demonstrated, using an appropriate and internally consistent system-wide model and the applicable NERC planning methodology, that Import Path 2 was actually required in accordance with TPL-001-05.1 or whether it merely 'worked' within the framework of their various modeling scenarios.

It is the substantial, credible and compelling evidence that makes it necessary for the Commission to question the validity of the PBRP model. PBRP Import Path 2 will cost ratepayers around \$4-billion, will directly impact thousands of Texas landowners and about 10,000 acres of privately owned property.

The Commission is obligated to make a reasoned, record-supported decision with respect to this Appeal. Texas appellate courts give the Commission deference in technical matters, but that deference would not insulate the Commission order if decisions are made in an arbitrary or capricious manner. It would seem wholly unreasonable for the Commission to simply disregard Mr. Kennedy's Appeal and these substantial technical concerns or to try to explain them away as previously settled.

For these reasons, Mr. Kennedy respectfully requests that the Commission grant this appeal, fulfill the Commission's duty to the ratepayers, exercise the Commission's statutory oversight and audit authority over ERCOT, order an independent technical investigation and forensic audit sufficient to resolve the foundational modeling questions raised in the September 20, 2026 Motion, coordinate the remand schedule so that the investigation can meaningfully inform Preliminary Order Issue No. 11, and grant all other relief to which he may be entitled.

Date Signed: September 23, 2026

Respectfully submitted,

Kevin Kennedy

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