



Control Number: 28813



Item Number: 1607

Addendum StartPage: 0

RECEIVED

PETITION TO INQUIRE INTO THE
REASONABLENESS OF THE RATES
AND SERVICES OF CAP ROCK
ENERGY CORPORATION

§ 04 OCT 5 AM 11:06
§ BEFORE THE STATE OFFICE
§ OF
§ FILING CLERK
§ ADMINISTRATIVE HEARINGS

**CITY OF GREENVILLE'S MOTION TO STRIKE/OBJECTIONS
TO THE REBUTTAL TESTIMONY OF JOHN W. RAINEY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

NOW COMES The City of Greenville ("Greenville") who files this Motion to Strike/Objections to the Rebuttal Testimony of John W. Rainey and in support thereof, would show as follows:

**I. FAILURE TO FILE WORKPAPERS AND FAILURE TO COMPLY WITH
DISCOVERY REQUEST**

A. Background

Mr. John W. Rainey is sponsoring or co-sponsoring the A, B, C, D, H, I, and Q Schedules in the rate filing package ("RFP"). PUC Procedural Rule § 22.243(b) requires that workpapers be filed with these schedules. Mr. Rainey in his rebuttal testimony makes adjustments to many of these schedules but neither the schedules nor the workpapers were changed to reflect the changes made by Mr. Rainey. Many of the schedules are inaccurate.

Not only is Cap Rock required to file schedules and workpapers which support its rate request but it is required to provide the following information for each of its rebuttal witnesses.

Greenville 4-1. Please provide the following information for all rebuttal witnesses at the time rebuttal testimony is filed:

- a. the facts known by the witness that relate to or form the basis of rebuttal witness' mental impressions and opinions formed or made in connection with the rebuttal testimony;

11657

- ...
- d. all documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, prepared by or for the witness in anticipation of his rebuttal testimony; and

On September 29, 2004 Cap Rock filed the following response to Greenville's RFI 4-1 and all its subparts, as follows:

Cap Rock Response: The requested information is contained in the direct and/or rebuttal testimony submitted by the witnesses.

B. Failure to File Workpapers

While Mr. Rainey did file some workpapers attached to his testimony, he admitted during a deposition taken on September 30, 2004 that he had additional workpapers in a box located in another room other than the room where the deposition was taken. *These workpapers have never been produced.*

C. Failure to Comply With RFI Request

Greenville RFI No. 4-1(d) asked that Mr. Rainey furnish to the parties any documents that have been provided to, reviewed by or prepared by the witness in anticipation of his rebuttal testimony. This request has not been complied with in any form or fashion.

D. Remedy for Non-Compliance

The hearing on the merits be abated for one week from the date of the delivery of the workpapers and other documents called for in Greenville's RFI No. 4-1.

II. STRIKE EXHIBIT AND TESTIMONY WHICH RELIES ON HEARSAY

A. Background

Mr. Rainey testifies on Cap Rock's requested catastrophe fund ("storm fund"). Rainey Rebuttal Testimony at 41. He relies heavily on a letter written by a Mr. Mike Buttrey. *See* Attachment A to this motion. Mr. Rainey's testimony on page 41: 9-13, beginning with "I" and ending with "JWR-R-6" Should be stricken along with Attachment A hereto.

B. No Predicate Laid

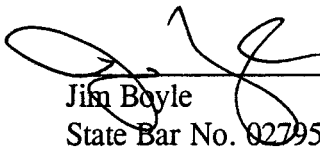
While an expert under Rule 703 of the Texas Rules of Evidence (TRE 703) can rely on hearsay, he can do so only if the information is of the type reasonably relied upon by experts in the particular field. There is no predicate set forth in the Rainey Rebuttal to permit the admission of the Buttrey letter. The following facts are worth noting.

- There is no indication in the letter what Mr. Buttrey's background is, not even that he is a licensed insurance agent.
- The letter is addressed to a Mr. Lester Baker and not to Mr. John Rainey. There is no indication that Mr. Rainey has ever had any contact with Mr. Buttrey.
- There is no testimony by Mr. Rainey that a letter of this sort is of the type typically relied upon by rate experts.

For all the foregoing reasons, the letter and Mr. Rainey's testimony at 40:9-13 should be stricken.

WHEREFORE, PREMISES CONSIDERED, Greenville prays that this Motion in all respects be granted.

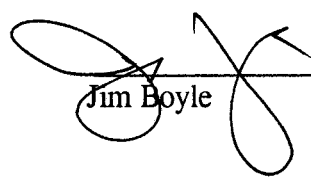
Respectfully submitted,
LAW OFFICES OF JIM BOYLE, PLLC
1005 Congress Avenue, Suite 550
Austin, Texas 78701
(512) 474-1492
(512) 474-2507 FAX



Jim Boyle
State Bar No. 02795000
Attorney for the City of Greenville

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all known parties of record by fax and/or first class mail on this the 5th day of October 2004.



Jim Boyle

ATTACHMENT A

-----Original Message-----

From: Mike Buttrey [mailto:Mike_Buttrey@mhbt.com]

Sent: Thursday, September 23, 2004 3:08 PM

To: Lester Baker

Subject: disaster coverage for transmissions lines

Lester, coverage for distribution and transmission lines for energy companies is extremely difficult or impossible to obtain. This is especially true at this date because of the recent hurricane activity in Florida and the Southeast. We have made inquiries over the past 10 years or more so I have some experience in trying to obtain this coverage.

This type of coverage is placed in Lloyd of London. When I looked at this previously, the minimum deductible was \$1,000,000. When I asked what the premium or rate would be for coverage excess of \$1,000,000 the premiums were in the \$500,000 range for Cap Rock.

The problem in obtaining this coverage is that only energy companies that have real and true exposure and a certain exposure of loss would be interested. For example, an energy company in Florida would have interest in windstorm damage or hurricane damage for their line. However, that Florida company would have no interest in ice storm damage to electric lines. Likewise, a West Texas energy company would have interest in ice storm damage to electric lines but no interest in hurricane coverage. Because of this, only companies with a real and specific exposure would purchase this coverage. This would cause the price to skyrocket.

Again, I have made several inquiries for Cap Rock over the years and the answer is the same. If we were able to obtain coverage, the premiums would be way too high and the coverage would be limited.

Please let me know if you would like additional information.

Mike Buttrey

Partner/MHBT

Mike_Buttrey@mhbt.com

800.443.0185

972.770.1607 direct

972.770.1699 fax

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail. You are hereby notified that the copying, use or distribution of any information or materials transmitted in or with this message is strictly prohibited.