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**PUC DOCKET NO. 29705
SOAH DOCKET NO. 473-04-8361**

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APPLICATION OF SAM HOUSTON	§	BEFORE THE
ELECTRIC COOPERATIVE, INC. FOR	§	
A CERTIFICATE OF CONVENIENCE	§	PUBLIC UTILITY COMMISSION
AND NECESSITY (CCN) FOR A	§	
PROPOSED TRANSMISSION LINE IN	§	OF TEXAS
SAN JACINTO COUNTY, TEXAS	§	

**SAM HOUSTON ELECTRIC COOPERATIVE, INC.'S
MOTION TO COMPEL TERRI REED/GEORGE RUSSELL TO RESPOND
TO SAM HOUSTON'S FIRST REQUEST FOR INFORMATION
REGARDING TERRI REED'S DIRECT TESTIMONY**

TO THE HONORABLE TOMMY BROYLES, ADMINISTRATIVE LAW JUDGE:

COMES NOW Sam Houston Electric Cooperative, Inc. ("Sam Houston") and files this its Motion to Compel Terri Reed/George Russell to Respond to Sam Houston's First Request for Information Regarding Terri Reed's Direct Testimony and in support thereof would show the following:

I.

On February 7, 2005, Ms. Reed/Russell filed with the Commission "Objections of Terri Reed to Sam Houston Electric Cooperatives, Inc.'s First Set of Requests for Information" ("Objections"). Said objections were received by Sam Houston via U.S. Mail on February 9, 2005. Five (5) business days from the time said objections were served on Sam Houston would be Wednesday, February 16, 2005 and this motion is therefore timely filed.

II.

Sam Houston moves to compel responses to the requests set forth below for which objections have been made.

RFI 1-1:

“Please provide copies of all documents that you have prepared, sent, or received that address or refer to the proposed project or this proceeding.”

Ms. Reed/Russell’s Objection:

Ms. Reed objects to this RFI on the grounds that it is overbroad and unreasonably burdensome. It is unbounded in time, place and subject matter and, thus seeks discovery of material not calculated to lead to the discovery of relevant evidence. *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989); 1999 Comments, Comm. 2.

Sam Houston’s Motion to Compel:

Sam Houston has specifically requested that Ms. Reed/Russell provide documents that address or refer to the proposed project of this proceeding. Said request is limited in time, place, subject matter and could lead to the discovery of relevant evidence. Ms. Reed has offered testimony as a witness in this proceeding, and as such Sam Houston is entitled to such materials it has requested under Rule 192.3(b) and knows of no way to further limit the scope of its request and still obtain all discovery to which it is entitled.

Sam Houston would submit that in its Second Request for Information to George Russell, Sam Houston submitted the following RFI 2-16:

“Please provide copies of all correspondence, including emails, not previously provided in this docket, that you have sent to individuals or companies that address Sam Houston’s proposed transmission project.”

Mr. Russell was able to, without specific objection to the types of information sought, provided a response to said request, limited only to the communications that were not “of

attorney-client communications, attorney work-product or communications protected by the joint-litigant privilege,....”.¹

Sam Houston in its RFI has requested substantially the same materials from Ms. Reed/Russell. However, Ms. Reed/Russell did not raise the same “attorney-client communications”, “attorney work-product”, or “communications protected by the joint litigant privilege” objections that were raised with Sam Houston’s RFI 2-16 submitted to Mr. George Russell. Sam Houston respectfully submits that if Mr. Russell is capable of responding to such a request without it being “overbroad-and unreasonably burdensome” then Ms. Reed who is testifying on Mr. Russell’s behalf, is equally capable of responding to such a request. Furthermore, Ms. Reed should be ordered to provide all materials requested without limitation since Ms. Reed/Russell has raised no additional objections limiting the scope of her response.

Ms. Reed/Russell objections rely on case law which is not applicable to this request. In *Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). The Texas Supreme Court held that a “Workers’ Compensation claimant’s discovery request, for all evidence supporting insurer’s allegations, was vague, ambiguous, and overbroad.” Sam Houston is not seeking all materials from Ms. Reed which supports her position in this proceeding. Once again, Sam Houston is only seeking documents which she has prepared, sent, or received “that address or refer to”: (1) “the proposed project”, which was made public in the fall of 2003, less than two years ago; and (2) “this proceeding”, which has only been before the Commission and the State Office of Administrative Hearings (“SOAH”) for less than one year. Such documents that relate to this proceeding and/or this proposed

¹ Response to Sam Houston Electric Cooperative, Inc.’s Second Request for Information to George Russell, PUC Item 150, page 18.

project are both relevant and discoverable. Furthermore, Sam Houston's request is not only relevant but is also limited in subject and in time and is not as broad as the request in *Loftin v. Martin*.

RFI 1-5:

Do you agree that enforcement of the Waterwood preservation restrictions is a "community joke?"

Ms. Reed/Russell's Objection:

Ms. Reed objects to this RFI on the grounds that it is neither relevant nor calculated to lead to discovery of information relevant to this proceeding, R. 192.3(a). Ms. Reed also objects to this RFI on the grounds that it is sought for the purposes of harassment. R. 191.3(c)(3).

Sam Houston's Motion to Compel:

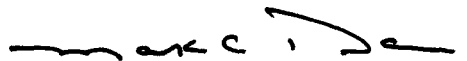
Sam Houston is not attempting to harass Ms. Reed. Sam Houston has previously discovered a document that appears to be authored by Ms. Reed. See attached Exhibit A. Sam Houston is simply trying to ascertain whether or not a statement made in that document is that of Ms. Reed's and whether or not the statement accurately reflects her view regarding the enforcement of the Waterwood Preservation restrictions. Throughout this proceeding Mr. Russell, on whose behalf Ms. Reed and other offered testimony, has claimed that various laws and various local restrictions prohibit Sam Houston from utilizing Route No. 9 for the construction of the proposed transmission project. Sam Houston is simply trying to determine the extent, if any, to which "restrictions" exist and to the extent, if they do, they are enforced. Mr. Zimmerman, president of the Waterwood Improvement Association, has also filed testimony regarding protection of the Waterwood area. Mr. Russell should not be allowed to simply provide evidence of "restrictions" and not provide any evidence which he or those presenting

testimony on his behalf have knowledge of, which negate the existence of said "restrictions", the enforceability of said "restrictions", and/or the lack of enforcement of said "restrictions". As thus the request is relevant to this proceeding and is discoverable under Rule 192.3(a).

As concerns Ms. Reed/Russell's objection on the grounds that said request was made for the purpose of harassment under Rule 191.3(c)(3), Sam Houston would submit that Ms. Reed/Russell offers no explanation as to why said request constitutes harassment, nor any facts suggesting that said request is simply for harassment purposes. Once again, Sam Houston is only trying to ascertain Ms. Reed's view of the enforcement of Waterwood Preservation restrictions based on a document allegedly authored by Ms. Reed. See attached Exhibit A. Ms. Reed/Russell's objections on harassment grounds are thus without merit and Ms. Reed should be ordered to respond to the request.

WHEREFORE, PREMISES CONSIDERED, Sam Houston respectfully submits that the "objections" filed by Ms. Reed/Russell be denied in their entirety, that responsive documents and answers be produced, and grant Sam Houston such other and further relief to which it may be entitled.

Respectfully submitted,




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**ATTORNEYS FOR SAM HOUSTON ELECTRIC
COOPERATIVE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, **Sam Houston Electric Cooperative, Inc.'s Motion to Compel Terri Reed/George Russell to Respond to Sam Houston Electric Cooperative, Inc.'s First Request For Information to Terri Reed Regarding his Direct Testimony**, will be mailed to all parties of record on this 16th day of February, 2005 by First Class, U.S. Mail, pre-paid postage, and via facsimile.



John T. Wright

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From: "Terri Reed" <terrier77340@y...>
Date: Sat Jun 7, 2003 2:14 pm
Subject: Nature Loses at Waterwood

Drive around Houston suburbs and golf courses, and you'll see mostly manicured expanses of green. Keep driving, and eventually you'll see the latest landscape trend in the United States; to get away from the manicured look by preserving the wild, scenic and natural. In fact, the top four courses on Golfweek magazine's annual list of best modern courses are all natural-style, and all were built within the last eight years. Those

courses include Tierra Verde Golf in Arlington, Texas, Pacific Dunes and Brandon Dunes (both in Oregon) as well as Whistling Straits in Wisconsin (site of PGA Championship in 2004). Increasingly, more golf courses in the United States are working toward goals of the Audubon International Signature Status Program. This program promotes environmental awareness, sound land and water management practices, and natural resource conservation. Why the emphasis on nature? Because in a business where only the fittest survive, golf courses today are promoting wild life, nature walks, wetlands, and native grass--a natural beauty reserve PLUS a great game of golf.

Waterwood's initial developer, Horizon Corporation, was way ahead of its time when they boasted in 1980 sales material that "protection and enhancement of the magnificent environmental heritage of Waterwood is a major goal of the developer." It further claimed that "carefully conceived restrictions assure that Waterwood will remain unspoiled through the years." Often, new homeowners claim to

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buy a lot or home here because of Waterwood's unspoiled and natural "curb appeal." This restriction -- a protective covenant also known as a deed restriction -- is unique to Waterwood simply because most lot owners elsewhere have nothing to preserve when building a home. They have no wild, scenic and natural areas to protect.

Ironically, Waterwood's most blessed natural resource is its most under-appreciated one. Supposedly, the Architectural Control Board (ACB) which is composed of three people, is the entity that is charged with preserving our natural wildness. While it may seem logical that one of the ACB directors should be an avowed nature preserver (such as one of our more famous neighbors, Kenneth Russell), politics always wins over logic at Waterwood.

That nature deed restriction states that "native growth on any lot shall not be destroyed or removed from any lot, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, garages, accessory buildings and/or walled-in service yards and patios, unless written permission is first obtained from the Board."

This year, the "Board" is Carol Winters, Dick Hansen and Damon Thomas. All three are elected WIA directors, although only one needs to be a WIA director. While it may seem logical to have two non-WIA Board members serve on the ACB to ensure professionalism, fairness and consistency, politics again wins over logic at Waterwood. Supposedly, these three people visit and make final decisions about which trees can be removed prior to construction. It is unfortunately a decision that changes from year to year, depending on who serves as the ACB that year. If you can't do something this year, wait till next year.

This year, however, Joe Moore (WIA's administrative employee who is now readily accessible at Waterwood instead of 28 miles away in Huntsville) has become powerful enough to obtain ACB permission for several lot owners to remove all pine trees on their lots. A clear message has been sent to the community. With a little bit of "good-old-boy networking", you can have a chat with Joe Moore to get his help in circumventing this deed restriction. If you can convince him that you're one of the good old boys in the community (or have the potential to become one), he'll do you a favor and convince his pals, Dick Hansen and Damon Thomas, to grant you permission to remove native growth. Furthermore, in the event that Hansen, Thomas and Winters feel too guilty about allowing the killing of something they're suppose to protect, Joe Moore will invite you to make an appeal to the WIA Board at its monthly meeting. This ingenuous strategy created by Joe Moore allows the ACB members (Hansen, Thomas and Winters) to dilute their guilt over killing trees among six of their peers (similar to the way nine people on a firing squad are chosen to share the guilt of killing someone; "it wasn't my bullet"). Readers may recall that Waterwood Watchdog complained two years ago about the political havoc and inconsistency created when three WIA directors also serve as the ACB, and when there is no written ACB appeal procedure. Sadly, enforcement of our nature preservation restriction will continue to be a community joke until

we are guided by a respected WIA president.

It is ironic that Joe Moore and the ACB, along with the WIA Board, have begun an ingenuous practice of allowing lot owners to destroy their piece of rugged natural beauty, while the rest of the country, albeit a younger one, is becoming enlightened about natural landscapes. It is no surprise that struggles, sometimes dragged into the courtroom, have begun between these two groups of people, not just at Waterwood, but elsewhere, too. There are the traditional folks who want the manicured green look and then there are those who are making an effort to get away from that unnatural, very contrived, manicured look by simply leaving more untouched areas.

Here in Waterwood, a drive-through reveals just where a homeowner stands on this issue. There are those who take the surgical and medicinal approach to having a green, well manicured and irrigated lawn, and there are those which take the leave-it-alone approach that needs minimal intervention, less water, less maintenance and less chemical intervention. But, for all its virtues and its increasing popularity, this leave-it-alone look (despite our 28-year-old deed restriction) won't catch on at Waterwood until there's a change of heart or change of staff and directors at the WIA office building.

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