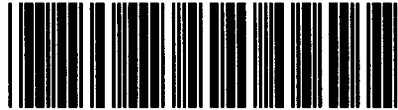




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SOAH DOCKET NO. 473-10-1097
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APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO
AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE
GILLESPIE TO NEWTON 345-KV CREZ TRANSMISSION LINE IN GILLESPIE,
LLANO, SAN SABA, BURNET, AND LAMPASAS COUNTIES

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

LCRA TRANSMISSION SERVICES CORPORATION'S
OBJECTIONS TO LANDOWNERS' PRESERVATION GROUP'S
FIRST, SECOND, AND THIRD RFI'S

TO THE HONORABLE WENDY K.L. HARVEL:

Applicant, LCRA Transmission Services Corporation (LCRA TSC) hereby files these Objections to Landowners' Preservation Group's First, Second, and Third RFI's (Objections), and in support thereof would respectfully show the following:

I. Introduction

LCRA TSC filed its application to amend its Certificate of Convenience and Necessity (CCN) on October 28, 2009. On November 2, LCRA TSC received its first set of Requests for Information (RFI) from Mr. William Hinckley, represented by the firm of Herrera & Boyle.¹ Since that time, the clients of Herrera & Boyle have morphed into the Landowners' Preservation Group (LPG)², and have filed ten separate RFI's consisting of 147 questions with over 180 discrete subparts.³

On December 9, 2009, LPG served LCRA TSC with LPG's First RFI, consisting of 33 questions and 50 separate subparts.⁴ On December 10, 2009, this was followed by LPG's Second RFI, consisting of fifteen questions and 27 subparts.⁵ On December 14, 2009, LCRA TSC

¹ See PUC Interchange item No. 9.

² See LPG's Motion to Intervene, Nov. 11, 2009, PUC Interchange Item 209.

³ The first seven RFI's from Herrera & Boyle were filed on behalf of Mr. William R. Hinckley. The last three RFI's, served to LCRA TSC on Dec. 9, 10, and 14, and containing 69 questions with numerous subparts, were filed on behalf of LPG. This group also includes Mr. William Hinckley.

⁴ See PUC Interchange Item 272.

⁵ See PUC Interchange Item 281.

was served with LPG's Third RFI, consisting of 21 additional questions.⁶ Under Order No. 1, parties must file objections to discovery requests within five working days of receipt.⁷ Therefore, these Objections are timely filed.

II. Certificate of Conference

Counsel for LCRA TSC, Bill Medaille, conferred with counsel for LPG, Carrie Tournilion, by telephone on Friday, December 11, and Tuesday, December 15, 2009, regarding LPG's First and Second RFI's. Counsel for LPG agreed to withdraw Questions 2-5 and 2-6, and to limit the scope of Questions 1-31, 1-32, 1-33, and 2-4.

Counsel for LCRA TSC, Bill Medaille, contacted counsel for LPG, Jim Boyle, by telephone on Monday, December 14, and Wednesday, December 16, to confer regarding LPG's Third RFI. However, the parties were unable to come to an agreement. Therefore, LCRA TSC is filing this motion.

III. Objections Generally

While intervenors possess a broad right to discovery, their right is not unlimited. Intervenors have the right to seek discovery on any subject matter that is not privileged and is relevant to the pending docket. TEX. R. CIV. P. 192.3(a). However, the Commission's rules allow the ALJ to intervene in discovery to prevent requests that are cumulative or duplicative, create an undue burden or expense, are designed to harass the receiving party, or where the information is readily available to the requesting party. P.U.C. PROC. R. §22.142(a)(1). The Texas Rules of Civil Procedure reinforce this point by allowing limitation on the scope of discovery for unreasonably cumulative or duplicative discovery, and where information is obtainable from another source that is more convenient, less burdensome or less expensive. TEX. R. CIV. PRO. §192.4(a).

As noted above, these three sets of RFI's followed seven other sets of RFI's from one member of the same group of intervenors. Many of the questions have been asked and answered in very similar form already. By continuing to attempt to reach the same issue through repeated questioning, intervenors' counsel has either failed to review the CCN Application, Environmental Assessment, and testimony, has failed to review previous LCRA TSC responses, or is simply harassing the applicant. Many of the questions do not seek any new information beyond

⁶ See PUC Interchange Item 294.

⁷ Order No. 1 at 7.

what LCRA TSC has already provided in its extensive Application, Environmental Assessment, numerous attachments, and supporting direct testimony. Many of these questions simply ask LCRA TSC to calculate distances from the maps already provided. These requests amount to simple “make work” for LCRA TSC, and create an undue burden for LCRA TSC’s personnel to reiterate information which has already been provided. Finally, many of the questions are simply irrelevant, asking about other utilities, other lines, or even about water releases from a dam. Counsel for intervenors has made no attempt to confine its questions to the issues under review in the current docket.

IV. Specific Objections to LPG’s First RFI.

LPG’s First RFI, consists of 33 questions and 50 separate subparts. LCRA TSC objects to Questions 1-4, 1-16, 1-17, 1-24, and 1-28.

Question 1-4 asks:

If different than the response to LPG RFI 1-3, how many habitable structures come within 50 feet of a proposed route? Please list the response for each route separately.

Objection: Harassment. This information is readily available in the Environmental Assessment filed by LCRA TSC as Attachment 1 to the CCN Application. Indeed, tables 6-3 through 6-13 list every known habitable structure within 500 feet of each proposed route, *also listing the distance that each structure is from each route*. Hence, the information is already provided in the form LPG has requested. All LPG needs to do is read the tables and count the structures within whatever distance from a route they care to choose. Question 1-4 asks for nothing more than for LCRA TSC to do intervenors’ work for them.

Questions 1-24 and 1-28 suffer from the same problem. Question 1-24 asks:

What is the shortest distance between any habitable structure of which the LCRA is aware, and the centerline of a proposed 345 kV transmission line?

Question 1-28 asks:

Does the LCRA intend to construct a transmission line nearer than 500 and/or 1000 feet to an historically significant site?

Objection: Harassment. In both cases, the information requested is explicitly presented for each route in tables 6-3 through 6-13 of the Environmental Assessment, for both habitable

structures and historical/archeological sites (as well as for other constraints). Intervenor can easily answer these questions simply by actually reading what LCRA TSC has filed.

The information sought in these three requests is readily available to the intervenors already. Hence, these questions are simple harassment of LCRA TSC and are “make work” projects.

Questions 1-16 and 1-17 suffer from a different problem. Question 1-16 asks:

Please describe the solution engineered by Oncor to issues associated with locating of the Newton substation in a floodplain.

Question 1-17 asks:

Please provide any studies of other documents in LCRA TSC’s possession that support Oncor’s solution to issues associated with locating the Newton substation in a floodplain, including but not limited to the engineering study performed by Oncor to be presented to the County judge for approval, as discussed in Attachment 1 to LCRA TSC’s response to Hinckley’s RFI 3-10, page 2 of 4.

Objection: Irrelevant to the subject matter of the pending action. LCRA TSC cannot answer for Oncor Electric Delivery Co. (Oncor) or its engineering solutions. Further, the location of the Newton Substation is only an issue in this proceeding in so far as parties know where the proposed CREZ line terminates. The layout and engineering of the Newton Substation are not issues at all in this docket. Rather, they are issues to be handled, if at all, in Docket No. 37464 (Oncor’s Brown to Newton line). Hence, these questions are irrelevant to the proceeding at hand. The basic standard for discovery requires the discoverable matters to be relevant to the proceeding. TEX. R. CIV. PRO. §192.3(a). An issue that cannot be litigated in this proceeding is by definition immaterial.

V. Specific Objections to LPG’s Second RFI.

LPG’s Second RFI, consists of 15 questions and 27 separate subparts. LCRA TSC objects to Questions 2-2 and 2-3. Question 2-2 asks:

Please describe where the private, paved airfields are located that are capable of handling small single-engine aircraft, including but not limited to which line segments the airfields affect and how close each airfield comes to any segment.

Question 2-3 asks:

Please describe where any small, unimproved grass landing strips are located, including but not limited to which line segments the landings affect and how close each landing comes to any segment.

Objection: Harassment and obtainable from sources convenient to intervenors. Figures 3-1a, 3-1b and 3-1c (the “constraints maps”) of the Environmental Assessment filed by LCRA TSC already show every known airfield in the study area, and tables 6-3 through 6-13 of the Environmental Assessment list the distance of each airfield from any nearby routes. Further, Question 21 of the CCN Application identifies all known private airstrips within 10,000 feet of any route, and all FAA registered airports with runways greater than 3,200 feet within 20,000 feet of any route. This question identifies all such airstrips by name, FAA number, and runway length and surface.

Hence, all of the information sought is already readily available to the intervenors. These types of requests are simple “make work” for LCRA TSC, creating a burden on busy staff to provide formal answers in a timely manner without the benefit of providing any new information not already in the possession of the intervenors.

VI. Specific Objections to LPG’s Third RFI.

LPG’s Third RFI, consists of 21 questions. LCRA TSC objects to sixteen of the 21 questions. Pages 5 and 6 of LPG’s Third RFI, listing all 21 questions asked, have been attached as Exhibit A to these Objections.

Question 3-2 asks:

What is the cost difference to using Links C28 and C30 instead of using Link C29 for the Preferred Route? Please provide workpapers supporting your calculation.

Objection: Harassment; this question has been asked and answered. LCRA TSC has provided what cost estimate data is available on a “per segment” basis to the intervenors already in response to William Hinckley’s Second RFI, questions 2-3 and 2-14. In response to Hinckley’s Fourth RFI, Question 4-1, LCRA TSC further explained other costs for this project are not determined by segment. Hence, LCRA TSC has already provided all information that could be useful in answering this question.

Questions 3-4, 3-13, 3-15, 3-16, 3-18, 3-19, & 3-20 ask:

- 3-4: Please show as precisely as possible the point at which C17 enters Inks Lake and exits Inks Lake, going south to north.
- 3-13: At the point where the 345 kV line on C17 enters Inks Lake from the south to the point where the line exits Inks Lake on the north, how many feet are between those two points? Please be as precise as possible.
- 3-15: On C17, how many feet does it take to cross Inks Lake?
- 3-16: On C20 how many feet does it take to cross the Colorado River?
- 3-18: At the point that C17 crosses Inks Lake, on the north side, how far in distance is it to the closest point of Inks State Park? Please be as precise as possible.
- 3-19: At the point that C20 crosses the Colorado River, on the northeast side, how far in distance is it to the closest point of Colorado Bend State Park? Please be as precise as possible.
- 3-20: On C22 how many feet does it take to cross the Colorado River? Please be as precise as possible.

Objection: Harassment. Each of these questions asks LCRA TSC to describe points on a map and/or measure distances between two points on a map. LCRA TSC has provided numerous maps in its CCN Application and Environmental Assessment, including eighteen pages of oversized maps. These maps contain all the spatial data related to this application. All seven of the questions in LPG's 3rd RFI asking LCRA TSC to describe points and measure distances between various points on a map amount to nothing more than harassment, as the intervenors' counsel could measure the distance with a ruler just as easily as could LCRA TSC. LCRA TSC provided these maps in hard copy and electronically precisely so all interested parties could have the information to study the area. LCRA TSC should not be required to respond to these harassing "make-work" requests that provide no new information.

Question 3-5, 3-6, & 3-7 ask:

- 3-5: During the last twelve months please set forth the amount of water released at Buchanan Dam, by date.
- 3-6: What is the effect of water releases at Buchanan Dam during the last twelve months on Inks Lake, especially in the area where C17 crosses Inks Lake, if possible.
- 3-7: For the last ten years, please indicate the largest water release from Buchanan Dam and the date on which that occurred.

Objection: Relevance to the subject matter of the pending action. These questions ask about the releases of water from Buchanan Dam over the last decade. Counsel for intervenors appears to believe that since the dam is owned by LCRA (though not LCRA TSC), it is fair

game. However, operation of the dam has nothing to do with transmission line design or with the issues to be decided in this docket.

Questions 3-8, 3-9, 3-10, 3-11, & 3-12 ask:

3-8: What was the total cost for rebuilding T-109?

3-9: When was the rebuild of T-109 completed?

3-10: Why were monopoles selected for the rebuild of T-109?

3-11: What was the cost of each monopole?

3-12: Could the type of monopoles used for T-109 support a 345kV circuit? If not, why not? (Assume that the monopole is only supporting a single 345 kV circuit i.e. that no other lines or circuits are on the monopole).

Objection: Relevance to the subject matter of the pending action. These questions ask about the cost, timing, and structures used in rebuilding the T-109 transmission line. While these questions may be of academic interest to a student of transmission line design, the rebuilding of an existing non-CREZ 69-kV line into a non-CREZ 138-kV line does not address any issue to be decided in the current docket concerning a much larger 345-kV CREZ line. Nor is the request to dig up records on this historical event reasonably calculated to lead to the discovery of admissible evidence. Hence these questions fail the initial threshold tests for discovery outlined in TEX. R. CIV. PRO. 192.3(A) and P.U.C. PROC. R. §22.142(a)(1)(D).

LCRA TSC has already faced and answered a number of RFI questions which could have been answered by the intervenors themselves, either through reading LCRA TSC's CCN Application, and supporting testimony, or by reading the responses LCRA TSC provided to previous RFI's. To this point, LCRA TSC has not objected to these repetitive and often irrelevant questions. LCRA TSC recognizes that its 781-page application is a lot to wade through, particularly for a *pro se* intervenor. Hence, LCRA TSC tried to be helpful and point out where intervenors could find their answers in the application, rather than objecting. In this case, LCRA TSC's objections are not lodged against questions propounded by *pro se* intervenors, but rather against questions propounded by counsel with some experience in regulatory matters generally, and CCN dockets specifically.

Here, time is growing short, both with upcoming deadlines and holidays, and RFI's are become both more numerous and, from certain parties, more repetitive. Hence, LCRA TSC must object to those questions which do not elicit any new, relevant information, but simply create additional work for LCRA TSC representatives. If LCRA TSC is forced to continue responding

to irrelevant and repetitive questions, it will find it difficult to make timely responses to more substantive discovery requests from parties that are just now availing themselves of the discovery process.

VII. Prayer

WHEREFORE, PREMISES CONSIDERED, LCRA TSC objects to a number of questions in LPG's First, Second and Third RFI's, and respectfully requests the ALJ to order that LCRA TSC is not required to answer these questions. LCRA TSC respectfully requests that it be granted any other relief to which it may show itself entitled.

Respectfully submitted,

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By: William Medaille w/permission
William Medaille
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ATTORNEYS FOR LCRA TRANSMISSION
SERVICES CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on this the 16th day of December 2009, by facsimile, First-Class U.S. mail, or by hand delivery.

William Medaille w/permission
William Medaille *Jm*

EXHIBIT A

**SOAH DOCKET NO. 473-10-1097
PUC DOCKET NO. 37448**

**LANDOWNERS' PRESERVATION GROUP'S
THIRD SET OF REQUESTS FOR INFORMATION
TO THE LCRA TSC**

- 3-1. Why did LCRA include Line C30 instead of Link C29 on the Preferred Route? Please explain in detail.
- 3-2. What is the cost difference to using Links C28 and C30 instead of using Link C29 for the Preferred Route? Please provide workpapers supporting your calculation.
- 3-3. Please fully describe the starting and ending points for T-106.
- 3-4. Please show as precisely as possible the point at which C17 enters Inks Lake and exits Inks Lake, going south to north.
- 3-5. During the last twelve months please set forth the amount of water released at Buchanan Dam, by date.
- 3-6. What is the effect of water releases at Buchanan Dam during the last twelve months on Inks Lake, especially in the area where C17 crosses Inks Lake, if possible.
- 3-7. For the last ten years, please indicate the largest water release from Buchanan Dam and the date on which that occurred.
- 3-8. What was the total cost for rebuilding T-109?
- 3-9. When was the rebuild of T-109 completed?
- 3-10. Why were monopoles selected for the rebuild of T-109?
- 3-11. What was the cost of each monopole?
- 3-12. Could the type of monopoles used for T-109 support a 345kV circuit? If not, why not? (Assume that the monopole is only supporting a single 345 kV circuit i.e. that no other lines or circuits are on the monopole).
- 3-13. At the point where the 345 kV line on C17 enters Inks Lake from the south to the point where the line exits Inks Lake on the north, how many feet are between those two points? Please be as precise as possible.

- 3-14. In crossing Inks Lake on C17, will one or more platforms in Inks Lake need to be constructed, if so, how many?
- 3-15. On C17, how many feet does it take to cross Inks Lake?
- 3-16. On C20 how many feet does it take to cross the Colorado River?
- 3-17. On C20 is it anticipated that any platforms will have to be built in the Colorado River in order to support the 345 kV line?
- 3-18. At the point that C17 crosses Inks Lake, on the north side, how far in distance is it to the closest point of Inks State Park? Please be as precise as possible.
- 3-19. At the point that C20 crosses the Colorado River, on the northeast side, how far in distance is it to the closest point of Colorado Bend State Park? Please be as precise as possible.
- 3-20. On C22 how many feet does it take to cross the Colorado River? Please be as precise as possible.
- 3-21. On C22 is it anticipated that any platforms will have to be built in the Colorado River in order to support the 345 kV line?