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

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

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

FILED
2021 APR 9:42
PUC CLERK

FRIENDS OF ENCHANTED ROCK STATE NATURAL AREA'S RESPONSE
TO COMMISSION STAFF'S OBJECTION TO MOTION TO INTERVENE

The Friends of Enchanted Rock State Natural Area (the Friends Group) files this Response to the objections to its intervention request filed by the Staff of the Public Utility Commission of Texas (Staff) and would respectfully show:

I.

The Staff appears to have misunderstood the nature of the Friends Group as well as the basis for its motion to intervene. Staff's objections contain, under a heading entitled "Applicable Law," a discussion of the law in Texas on group or associational standing, citing a number of leading cases. However, this discussion and the cited cases are inapplicable in this case. The Friends Group is not claiming group or associational standing. It is not seeking intervention on the basis of the interests of any one of its officers, directors or any other of its representatives. It is seeking intervention on the basis of its own interests and purposes, as set forth in its articles of incorporation and in the Memorandum of Understanding it has entered into with the Texas Parks and Wildlife Department (TPWD).

II.

In its objections, Staff observes that Texas courts have established a standard for associational or group standing. It cites *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440 (Tex. 1993) for the proposition that an association has standing to sue on behalf of its members when, among other things, the members would otherwise have standing to sue in their own right. Staff also claims that courts have applied these standards to “environmental groups” in *Save our Springs Alliance, Inc. v. Lowry*, 934 S.W.2d 161 (Tex. App. — Austin 2003, writ overruled).

But both these cases are inapplicable. The Save Our Springs Alliance was a “loosely-knit group of approximately 1,100 persons”¹ attempting to sue on behalf of its members. Likewise the Texas Association of Business was a collection of businesses attempting to sue on the basis of its members’ interests.² The Friends Group is a Texas nonprofit corporation, separate and distinct from its officers and directors. As indicated above, the Friends Group does not seek intervention on the basis of any other party’s interest. Further, unlike the Texas Association of Business, the Friends Group’s purpose, discussed at greater length below, is not to act on behalf of any “members” or other representatives.

As a result, Staff’s claims that the Friends Group must comply with P.U.C. Procedural Rule 22.103(b) are misplaced. That rule contemplates associational standing and is applicable to “associations” or “organized groups” of individuals advancing the interests of their members. Since the Friends Group is neither an “association” nor an “organized group,” it is not subject to the rule.

¹ *Save Our Springs Alliance*, 934 S.W.2d at 163.

² *Texas Ass’n of Business*, 852 S.W.2d at 446.

III.

The Friends Group was incorporated in 1999 as a Texas non-profit corporation and is governed by its board of directors rather than a body of members. In fact, it has no “members” apart from its officers and directors. According to the Memorandum of Understanding it entered into with the Texas Parks and Wildlife Department (TPWD), it is charged with assisting TPWD with, among other things, the protection, preservation, and interpretation of the natural and cultural resources of Enchanted Rock State Natural Area (ERSNA). Further, it conducts its business activities, which include both fundraising and sales activities,³ at ERSNA.⁴

As a result, the Friends Group has met the standing requirements of P.U.C. Procedural Rule 22.103. Although its right to participate is not expressly conferred by statute, Commission rule or order or other law, it has a justiciable interest that may be adversely affected by the outcome of the proceeding. Its corporate activities related to the preservation and interpretation of ERSNA’s natural and cultural resources, as well as its fundraising and sales activities conducted at ERSNA, give it an interest in ERSNA that would be adversely affected by the construction of a transmission line in too close a proximity to ERSNA.

IV.

Staff’s position seems to be that only directly affected landowners, or those holding certain property interests, have standing to intervene in transmission line CCN cases. The Friends Group believes that this is too narrow a view and is not supported by existing administrative law – and Commission - precedent. While directly affected landowners certainly have a right to intervene, the Commission has never been so restrictive as to limit party participation only to directly affected landowners.

³ As part of its non-profit business activities, the Friends Group sells merchandise at ERSNA.

⁴ The Friends Group’s street address is 16710 Ranch Road 965, Fredericksburg, Texas, which is located at ERSNA.

First, long-standing Texas precedent instructs that the right to participate in administrative proceedings is construed liberally in order to encourage varying viewpoints for the administrative agency to consider. *Fort Bend County v. Texas Parks & Wildlife Comm'n*, 818 S.W.2d 898, 899 (Tex. App.—Austin 1991, no writ).⁵ Second, if a statute requires that a person be “interested, affected or aggrieved” by an action in order to have standing as a party, the affected person must show potential damage or injury “other than as member of the general public.” *Scott v. Board of Adjustment*, 405 S.W.2d 55, 56 (Tex. 1966). Finally, that injury need not affect property rights in order to confer standing. Instead, that harm may be “economic, recreational, or environmental.” *City of Bells v. Greater Texoma Util. Auth.*, 790 S.W.2d 6, 11 (Tex. App.—Dallas 1990, writ denied).

The Friends Group more than meets these requirements. Its interests in assisting TPWD to preserve and interpret ERSNA’s natural and cultural features, as well as the interest in its economic business activities, which include both fundraising and sales activities at ERSNA, set it apart from members of the general public who might simply object to the appearance of a transmission line constructed in too close a proximity to ERSNA.

The experience of the Galveston Historical Foundation (Foundation) when it attempted to appeal a zoning decision to the Zoning Board of Adjustment in Galveston is particularly instructive. Like the Friends Group, the Foundation was a non-profit organization. It conducted certain of its business, including fundraising and sales activities, within a historical district in the City of Galveston. Although the Zoning Board of Adjustment found, and the district court upheld the finding, that the Foundation had no standing to challenge a zoning decision relating to that historical district, the First District Court of Appeals in Houston found otherwise. It ruled

⁵ Also see, *Application of Southwestern Bell Telephone Company to Approve Deletion of the Carrier Common Line and Interexchange Access Charge Credits*, Docket No. 10463, 17 P.U.C. Bull 3050.

that, because the Foundation conducted business activities, including fundraising and sales activities, within the historical district, it had an interest in the historical nature of the district apart from any interest the general public might have and so had standing to challenge the zoning decision. *Galveston Historical Foundation v. Zoning Board of Adjustment*, 17 S.W.3d 414, 418 (Tex. App.—Hous. (1 Dist) 2000, writ denied). Similarly, because of its business and preservation activities conducted at ERSNA, the Friends Group has an interest in the natural character of the park apart from any interest the general public might have and so has standing to intervene in this proceeding.

V.

Staff's narrow reading of the rules regarding justiciable interest is at odds with the jurisprudence discussed above. It is also at odds with previous Commission precedent, which has not, in the past, limited participation in CCN proceedings to those holding property rights that would be affected by the line in question. For example, in one transmission line CCN case, more than 400 citizens of the town of Wimberley were granted party status without a showing that they were directly affected landowners. The ALJ in the case explained that they were granted party status on the basis that "a resident of the town of Wimberley should have a justiciable interest in the community values, aesthetic values, and historical values of the downtown Wimberley area."⁶ Similarly, in Docket No. 29065, the Commission upheld an ALJ's ruling that parties had a right to intervene in a transmission line CCN case even though they were not directly affected by the subject line but, instead, would be affected by the routing of another

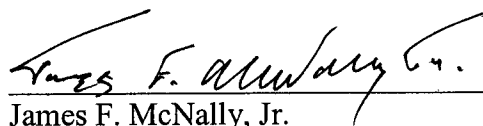
⁶ *Application of Pedernales Electric Cooperative, Inc. to Amend Certificate of Convenience and Necessity for Proposed Transmission Line Within Hays County*, Docket No. 11014, Proposal for Decision, p. 7, fn no. 7.

line, to be constructed by another utility, whose tie-in point with the subject line would be determined, in part, by the routing of the subject line.⁷

The logical result of Staff's arguments is that even an entity like TPWD, an entity that is also charged with the preservation, protection and interpretation of ERSNA's natural and cultural features, would not be able to intervene as a party participant in these sorts of proceedings on the basis of its interest in a state park. Similarly, a small business whose operations might be affected by the construction of a nearby transmission line would also not be allowed to participate. So restrictive a view is counterproductive and, ultimately, harmful to the Commission. Transmission lines, once built, become fixtures on the landscape for generations. And in weighing the evidence to determine the public interest, the Commission should benefit from a wide variety of viewpoints - not just those of directly affected landowners.

For the reasons set forth above, the Friends Group respectfully requests that Staff's objection to its motion to intervene be overruled and that it be granted party status in this proceeding.

Respectfully Submitted,

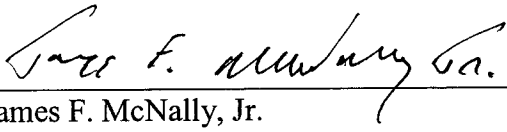


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⁷ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 345-KV Transmission Line in Kendall County, Texas, Docket No. 29065, Order No. 5 and Order on Appeal of Order No. 5.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties of record by electronic or first-class mail this 21st day of December 2009.


James F. McNally, Jr.