



Control Number: 37448



Item Number: 484

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**SOAH DOCKET NO. 473-10-1097  
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 LAMPASSAS  
COUNTIES, TEXAS**

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**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

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**GILLESPIE SUBSTATION INTERVENORS'  
JOINDER IN MOTION TO ABATE**

TO THE HONORABLE JUDGE WENDY HARVEL

COME NOW Karl and Mary Ransleben ("the Ranslebens"), Connie and Ruben Crenwelge ("the Crenwelges"), and Charles and Becky Anderson ("the Andersons"), referred to herein as the "Gillespie Substation Intervenor," and hereby submit their joinder in the motion to abate filed by KDCB Garrett Ranch, Ltd. ("KDCB") on December 30, 2009.

1. The Gillespie Substation Intervenor agrees with KDCB Garrett Ranch, Ltd. that Judge Yelenosky's December 21, 2009, decision letter in the administrative appeal of Docket No. 35665 indicates the Court will enter an order the effect of which will be to: a) remove the Application in this proceeding from PURA Section 39.904(h) and 39.203(e); b) relieve the parties and the Commission from the requirement to enter an order within the 181<sup>st</sup> day; and c) render this proceeding without foundation. The Gillespie Substation Intervenor agrees that it is appropriate to abate the proceeding to prevent unnecessary expenditure of the parties' and the Commission's resources.

2. Moreover, the Gillespie Substation Intervenor note that in its December 23, 2009, letter, the Texas Parks and Wildlife Department found that:

**TPWD is concerned that the TXNDD information has been misinterpreted and misused in Table 6-1 of the EA. As a result, real information on potential adverse impacts to species has not been evaluated as a constraint in the alternatives analysis and preferred route selection, nor are potential impacts addressed.**

**Recommendation:** Before a determination can be made as to whether the project would affect protected species, the evaluation would have to be carried further with appropriate use of the TXNDD records. Use of TXNDD records should be used only within the context described above. As noted in previous TPWD correspondence to PBS&J, TXNDD records, including mapped boundaries, do not necessarily indicate the extent of "known" habitat. The boundary of any mapped record is a best estimate and does not necessarily represent the total real extent of the element occurrence. The true boundary may actually be smaller or larger.

As noted in the May 12, 2009 letter, TPWD recommends identifying any preferred habitat for rare and protected species within the areas being considered in the alternative analysis. On-ground surveys by qualified biologists should be conducted to identify potential habitat throughout the project action area(s). If habitat is present, a survey for the presence of the species should be conducted during the season when the species is most likely to be found on-site. Determination of species impacts should be based on review of current and best scientific available data, including the TXNDD, and on-ground surveys for potential habitat and species.

As noted in TPWD correspondence of May 12, 2009, consultation with the U.S. Fish and Wildlife Service (USFWS) would be required for adverse effects to federally listed or protected species. Any take (incidental or otherwise) of state listed species is prohibited. State listed species may only be handled/relocated by permitted individuals authorized by TPWD. Any harm to rare species should be avoided. There are penalties and restitution values associated with unauthorized take of state listed species. Protection of State-Listed Species-Texas Parks and Wildlife Department Guidelines, which lists penalties, is attached. If impacts to rare species are unavoidable, contact this office for further guidance.

These comments by TPWD reflect that LCRA TSC's Application is unlikely to meet the requirement of PURA Section 37.056(c)(4) relating to recreational and park areas and environmental integrity until LCRA performs additional evaluation with appropriate use of TXNDD records, identifies preferred habitat for rare and protected species, conducts on-ground surveys by qualified biologists and follow-up surveys during appropriate seasons, and consults with the U.S. Fish and Wildlife Service regarding adverse effect on federally listed or protected species.

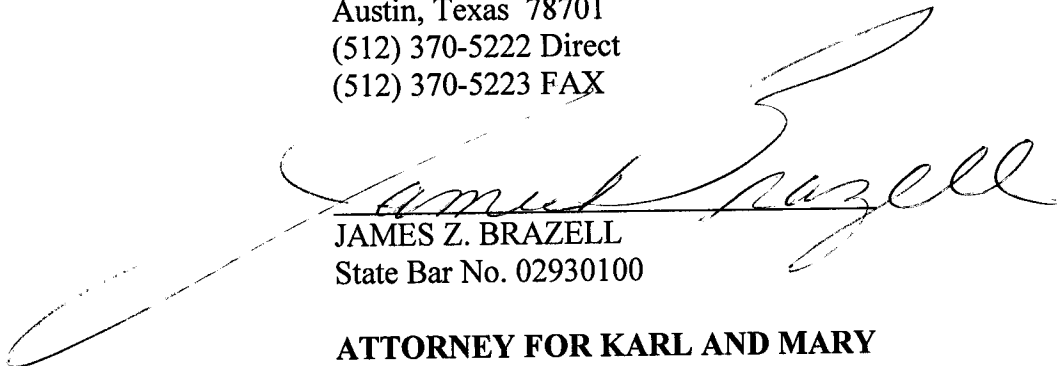
Abatement is appropriate while LCRA TSC addresses these requirements to prevent unnecessary expenditure of the parties' and the Commission's time and resources.

#### PRAYER

The Gillespie Substation Intervenors join in requesting that the Commission abate the proceeding until the issuance Judge Yelenosky's judgment, when the parties can file motions seeking appropriate rulings regarding the legal stature and basis of the Application under Docket No. 35665, PURA Sections 37.056(c)(4), 39.904(h), and 39.203(e), and the TPWD recommendations. Because the intervenors are scheduled to file testimony on January 7, 2010, the Gillespie Substation Intervenors support KDCB's request for an expedited ruling.

Respectfully submitted,

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**ATTORNEY FOR KARL AND MARY  
RANSLEBEN, CONNIE AND RUBEN  
CRENWELGE, AND CHARLES AND  
BECKY ANDERSON**

#### CERTIFICATE OF SERVICE

I hereby certify that on 4<sup>th</sup> day of January 2010 a true and correct copy of the foregoing document was served upon LCRA TSC and all parties e-mail, by facsimile, and/or First-class United States mail, postage paid.



JAMES Z. BRAZELL