

Control Number: 37448



Item Number: 614

Addendum StartPage: 0

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

RECEIVED
10 JAN 14 PM 12:01
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF LCRA TRANSMIS- §
SION SERVICES CORPORATION TO §
AMEND ITS CERTIFICATE OF CON- §
VENIENCE AND NECESSITY FOR THE §
GILLESPIE TO NEWTON 345 KV CREZ §
TRANSMISSION LINE IN GILLESPIE, §
LLANO, SAN SABA, BURNET, AND §
LAMPASAS COUNTIES, TEXAS §

BEFORE THE

STATE OFFICE OF ADMINISTRATIVE

HEARINGS

**OBJECTION OF LCRA TRANSMISSION SERVICES CORPORATION
AND MOTION TO STRIKE PREFILED DIRECT TESTIMONY
OF YATES & BOULTINGHOUSE WITNESS SOLVEIG TURPIN**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Objection to Prefiled Testimony and Motion to Strike ("Motion to Strike") the testimony of Yates & Boultinghouse Witness Solveig Turpin, and would respectfully show as follows:

I.

Background

Intervenor Yates & Boultinghouse filed the testimony of Solveig Turpin on January 7, 2010 in this docket. Objections were required to be filed per Order No. 4 on January 14, 2010; therefore, this objection was timely filed. LCRA TSC objects to certain portions of Solveig Turpin's testimony on the following bases.

II.

Motion to Strike

Inappropriate Expert Opinion Testimony

When offering opinion *as an expert*, a witness must possess "knowledge, skill, experience, training or education" that allows him to qualify as an expert. Tex. R. Evid. 702. This has been further identified by the Texas courts as special knowledge as to the very matter on which an opinion is offered. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 718 (Tex. 1998); *Helena Chemical Co. v. Williams*, 47 S.W.3d at 486, 499 (Tex. 2001); *Rogers v. Alexander*, 244 S.W.3d 370, 384 (Tex. App.—Dallas 2007, no pet.) (expertise concerning actual subject required for qualification). Further, an expert otherwise qualified to testify as to a partic-

ular subject matter is only qualified to offer testimony as to his particular field. *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996) (party must establish expert to meet Rule 702 “knowledge, skill, experience, training or education” test in the *specific issues* before the forum). *See Missouri Pac. R.Co. v. Buenrostro*, 853 S.W.2d 66, 77 Tex. App. – San Antonio 1993, writ den.). Extensive education and experience are insufficient where these are not related to the specific subject matter of testimony. *Champion v. Great Dane Limited Partnership*, 286 S.W.3d 533, 544 (Tex. App. – Houston [14th Dist.] 2009, no pet.) (no specialized knowledge on type of defect). While this means that testimony may be excluded, it also means that a person may qualify as an expert in some areas but not others even though testifying on seemingly related matters in the same case. The courts are very careful to ensure that alleged expertise is restricted to areas where the alleged expert is qualified to render an opinion and does not simply bleed over into related but distinct areas. *See, e.g., Pack v. Crossroads, Inc.*, 53 S.W.3d 492 (Tex. App. – Fort Worth 2001, writ denied) (expert’s testimony accepted for establishing standard of nursing care but rejected for closely related area of standard of care for nursing *institution*). The following excerpts represent inappropriate expert opinion:

Page 3, Q 16, line 7 “it” through line 8.

While appearing to have expertise in archeology, the witness has no specialized knowledge concerning the impact of transmission lines. The testimony fails the basic tests in *Gammill* and *Broders*. Further, expertise in one field does not allow the extrapolation of opinions into related but distinct areas (such as transmission line impact), as stated by *Pack*. The testimony is impermissible expert opinion.

III.

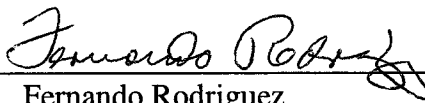
Conclusion and Request for Relief

WHEREFORE, PREMISES CONSIDERED, LCRA TSC respectfully requests that the identified testimony of Solveig Turpin be stricken. LCRA TSC also requests all other relief to which it may show itself entitled.

BICKERSTAFF HEATH DELGADO ACOSTA LLP

R. Michael Anderson
Texas State Bar No. 01210050
Joe N. Pratt
Texas State Bar No. 16240100
3711 S. MoPac Expwy
Building One, Suite 300
Austin, TX 78746
(512) 472-8021
(512) 320-5638 (fax)
Email: rmanderson@bickerstaff.com
jpratt@bickerstaff.com

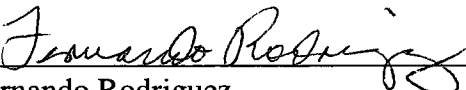
William T. Medaille
Associate General Counsel
Texas State Bar No. 24054502
Fernando Rodriguez
Associate General Counsel
Texas State Bar No. 17145300
Lower Colorado River Authority
P. O. Box 220
Austin, Texas 78767-0220
Telephone: (512) 473-3354
Facsimile: (512) 473-4010
Email: bill.medaille@lcra.org
ferdie.rodriguez@lcra.org

By: 
Fernando Rodriguez

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 14th day of January, 2010, by facsimile, first-class, U.S. mail, postage prepaid, overnight delivery, or by hand delivery.



Fernando Rodriguez