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## BEFORE THE STATE OFFICE

## ADMINISTRATIVE HEARINGS

**OF INTERVENOR WITNESS LYNNE LOLA RATHMAN**

**I.**

## Background

## II.

### Motion to Strike

### Unqualified Opinion Testimony

1025

ref'd). Probative evidence of facts necessary to support a rational perception and form an opinion is required; in other words, the person's "opinion" that such facts exist is not sufficient to subsequently support an admissible opinion. *See, for example, Green v. Ernest*, 840 S.W.2d 119 (Tex. App. – El Paso 1992, writ den.). A witness must also possess some other minimum requisite knowledge and ability proportionate to the subject matter of the opinion. *See, for example, McMillan*, 75 S.W.2d at 425 (ability to render value opinion must include knowledge of market). Finally, an opinion under Rule 701 cannot make a "general statement" of "opinion" that goes beyond case specifics and into the realm of a broader expert opinion. *See Baylor Medical Plaza Services Corp. v. Kidd*, 834 S.W.2d 69, 74 (Tex. App. – Texarkana 1992, writ den.). SOAH Rulings in PUC CCN proceedings have recognized the appropriateness of objections based on attempts to offer improper and unqualified opinion testimony. SOAH Dkt. No. 473-05-0215, PUC Dkt. No. 29833, *Application of LCRA Transmission Services Corp.*, Order No. 8 (February 25, 2005) at 2 and Order No. 9 (February 28, 2005) at 2. No proper basis for this type of opinion has been offered by this witness, and thus the following portions of testimony should be stricken:

Page 6, paragraph number 18, the fourth sentence ("Unfortunately, . . . 10 feet wide."), and the sixth sentence ("A tower . . . crossover.").

Exhibit A-2 (RFI responses), Testimony Page 11, the last two sentences of the second full paragraph (beginning with "So, with the towers" and ending with "around the tower.").

Exhibit A-2 (RFI responses), Testimony Page 11, the last sentence of the fifth full paragraph (beginning with "As long as the towers" and ending with "would be restricted.").

Ms. Rathman has provided no basis, factual or otherwise, in the form of background, qualifications, or expertise, to support or explain opinions regarding the precise locations of transmission line structures that may be constructed on her property as part of this project. Accordingly, her assertions, both in her affidavit and in her RFI responses which she has incorporated into her testimony, regarding the land use effects of the project are inadmissible.

Exhibit A-2 (RFI responses), Testimony Page 11, the last two sentences of the first (partial) paragraph (beginning with "The National Institute" and ending with "around these lines.").

On the subject of impact of EMF, an objection to testimony on this subject matter has been sustained as "beyond the witnesses' objections." SOAH Dkt. No. 473-07-2304, PUC Dkt.

No. 33844, *Application of LCRA TSC* Order No. 11 (September 24, 2007) at 3. No proper basis for this type of opinion has been offered by this witness.

**B.**

**Hearsay**

Hearsay is not admissible except as provided by rule or statute. TEX. R. EV. 802. Evidence is hearsay when its probative value depends in whole or in part upon competency or credibility of some person other than the person by whom it is sought to be produced. *Texarkana Mack Sales, Inc. v. Flemister*, 741 S.W.2d 558, 562 (Tex. App. – Texarkana 1987, no writ). Materials such as newspaper articles are hearsay. *Clancy v. Zale Corp.*, 705 S.W.2d 820, 828 (Tex. App. – Dallas 1986, writ ref'd n.r.e.) This rule extends to materials that require the application of specialized knowledge. See, for example, *Texas Employer's Ins. Ass'n v. Nixon*, 328 S.W.2d 809 (Tex. Civ. App. – Houston 1959, writ ref'd n.r.e.) (textbooks inadmissible as direct evidence to establish truth of matters). SOAH rulings in PUC CCN proceedings have recognized the appropriateness of objections based on attempts to proffer hearsay in pre-filed direct testimony. SOAH Dkt. No. 473-05-0215, PUC Dkt. No. 29833, *Application of LCRA Transmission Services Corp.*, Order No. 8 (February 25, 2005) at 1 and Order No. 9 (February 28, 2005) at 2; SOAH Dkt. No. 473-05-1671, PUC Dkt. No. 29065, *Application of LCRA Transmission Services Corp.*, Order No. 19 (April 26, 2005) at 1 (portions of testimonies). The following excerpts should be considered inadmissible hearsay:

Page 4, paragraph numbers 8 through 12.

Exhibits A-3 and A-4.

Exhibit A-2 (RFI responses), Testimony Page 10, the last sentence of the first paragraph responding to RFI BA-1-4 (beginning with “Good folks” and ending with “line problems.”).

The concerns of other landowners (if any) are not admissible through Ms. Rathman, as they are out of forum statements of those alleged commenters. Thus, to the extent that the above referenced excerpts of testimony and exhibits are offered for the truth of matters relating to effects on Ms. Rathman's neighbors from this transmission line project, they are inadmissible hearsay to which no exception applies.

### III.

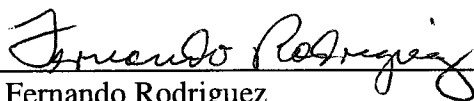
#### **Conclusion and Request for Relief**

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

#### **BICKERSTAFF HEATH DELGADO ACOSTA LLP**

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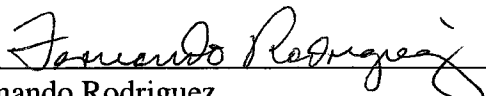
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ATTORNEYS FOR LCRA TRANSMISSION  
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**CERTIFICATE OF SERVICE**

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

  
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Fernando Rodriguez