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SOAH DOCKET NO. 473-10-1097
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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 KDCB GARRETT RANCH, LTD. WITNESS KIM GARRETT**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Objection to Prefiled Testimony and Motion to Strike ("Motion to Strike") the testimony of KDCB Garrett Ranch, Ltd. Witness Kim Garrett, and would respectfully show as follows:

I.

Background

Intervenor KDCB Garrett Ranch, Ltd. filed the testimony of Kim Garrett 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 Kim Garrett's testimony on the following bases.

II.

Motion to Strike

A.

Future Property Uses Are Immaterial

The Commission has stated:

. . . future developments and plans are too indefinite as to where or how potential routing areas will be affected and, as such, are irrelevant to this Commission's de-

cision. Further, current Commission rules require neither the utility nor the Commission to view this as a criterion in selecting the best route.¹

Thus, a specific set of information has been declared immaterial for CCN purposes, whether that information is used to attempt to change how criteria are considered or to inject speculative cost issues into the proceeding. Such information is immaterial in that it is not of consequence in determining the outcome of a CCN proceeding. Future property use information which should be stricken as immaterial include:

Page 4, lines 7-8

The testimony directly addresses future use.

B.

Unqualified Opinion Testimony

Opinion testimony by lay witnesses is limited to those rationally based on the witnesses' perception, TEX. R. EVID. 701, which requires personal knowledge. *See* Addison, Texas Practice Guide – Evidence §7.6. The knowledge must be based in part upon personal observation and not solely from hearsay. *McMillan v. State*, 754 S.W.2d 422, 425 (Tex. App. – Eastland 1988, pet. 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.*,

¹ PUC Dkt. No. 29684, SOAH Dkt. No. 473-04-7609, Application of LCRA Transmission Services Corp., Order on Rehearing (March 22, 2006) at 4.

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.

Page 5, line 6 "I" through Line 9.

No basis or qualification is stated to show the witness may offer an opinion on EMF issues. 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.

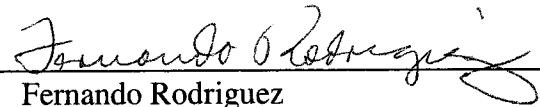
III.

Conclusion and Request for Relief

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

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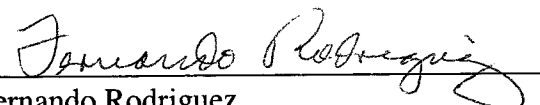
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ATTORNEYS FOR LCRA TRANSMISSION
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CERTIFICATE OF SERVICE

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


Fernando Rodriguez