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

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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 J17 RANCH WITNESS PEGGY JEAN MUELLER**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Objection to Prefiled Testimony and Motion to Strike ("Motion to Strike") the testimony of J17 Ranch Witness Peggy Jean Mueller, and would respectfully show as follows:

I.

Background

Intervenor J17 Ranch filed the testimony of Peggy Jean Mueller 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 Peggy Jean Mueller's testimony on the following bases.

II.

Motion to Strike

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.*, 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 38 “The” through line 45 “River”.

This witness has provided no basis, factual or otherwise for this assertion. No background, qualification or experience has been stated to support the assertion. No attempt to apply or discern LCRA TSC mitigation criteria has been made; therefore, the opinion does not and cannot apply to actual circumstances.

Page 6, Line 12 “Later” through Line 13 “livestock”.

Page 7, Line 10 “There” through Line 13 “owner”.

No basis has been provided for the EMF testimony. 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 Peggy Jean Mueller be stricken. LCRA TSC also requests all other relief to which it may show itself entitled.

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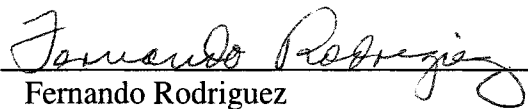
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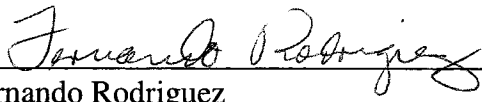
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By: 
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ATTORNEYS FOR LCRA TRANSMISSION
SERVICES CORPORATION

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