



Control Number: 37448



Item Number: 654

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SOAH DOCKET NO. 473-10-1097
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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 LAMPASAS COUNTIES

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**OBJECTION OF LCRA TRANSMISSION SERVICES CORPORATION
AND MOTION TO STRIKE PREFILED DIRECT TESTIMONY
OF KARL A. AND MARY B. RANSLEBAN
KARL A. RANSLEBAN**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Objection to Prefiled Testimony and Motion to Strike ("Motion to Strike") the testimony of Karl A. and Mary B. Ransleban Witness Karl. A. Ransleban, and would respectfully show as follows:

I.

Background

Intervenor Karl A. and Mary B. Ransleban filed the testimony of Karl A. Ransleban 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 Charles Anderson's testimony on the following bases.

II.

Motion to Strike

A.

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.

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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 7, lines 9-14.

Page 14, lines 5-19.

Page 18, lines 11-24.

Page 20, line 16 "However" through line 21.

Page 21, line 4 "However" through line 10 "Buchanan".

Page 22, lines 8-12.

Page 35, Line 15 "the" through Line 17 "simultaneously".

The witness has stated no basis, factual or otherwise in the form of background, qualifications or expertise, to support opinions about diversity, reliability and security. These opinions fail the *McMillan* and *Green* tests. To the extent they attempt to generalize about the issues (see, for example, the excerpt at page 18 cited above). They also fail the *Kidd* test.

Page 5, line 10 "along" through line 11 "Anderson".

Simple "agreement" testimony carries no weight and provides no independent competent evidence under Tex. R. Ev. 602.

Page 19, Lines 2-14.

Page 21, Lines 17-22.

This witness speculates that the reason for the particular routing described is as he posits. He has no basis, expertise or other source of information other than conjecture. Such speculation is prohibited as it attempts to provide an opinion based upon the assumption of an unproven fact. *See Golleher v. Herrera*, 651 S.W.2d 329 (Tex. App.—Amarillo 1983, no writ).

Page 30 Lines 10-19.

The witness has demonstrated no basis, qualifications or background to evaluate multiple comments from unknown persons containing multiple contradictory opinions (which the witness even attempts to disclaim in part, page 6, line 19 through page 7 line 2). The alleged facts are not sufficient to support a rational perception, and stray into prohibited general opinion. The opinion fails the *McMillan*, *Green & Kidd* tests. The witness fails to even attempt to show the applicability of the comments to the project in question; merely filing a document in a case at the PUC does not do so.

Page 32 Line 18 through page 33, line 4.

Exhibit KAR-12.

Page 33, Line 7 “Like” through “case”.

Page 33, Line 17 “Thus” through Line 20.

Page 34, Line 22 through page 35, line 1 “values”.

Page 34, Line 5 “Therefore” through Line 9.

The witness has demonstrated no basis, qualifications or background to interpret or apply the alleged reasoning or motivations related to PUC decisions. No statement of anything other than hearsay is presented, and a general and expansive opinion is expressed. The testimony fails the *McMillan* and *Kidd* tests.

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 31, Line 14 “It” through Line 17 “lines”.

Page 31, Line 18 “And” through page 32 line 2.

The witness has recited hearsay in its purest form, and has demonstrated no basis, qualification or ability to determine the significance, motivations or multiple factors that may influence these decisions. The veracity and, indeed, the entire basis of the statements is wholly dependent upon persons who cannot be present in the forum for this hearing. The materials rise to the level of such things as “I read it somewhere,” a type of hearsay prohibited by cases such as *Clancy*.

Page 6 Line 13 through Page 7, line 2.

Page 30 Line 10 through Line 19.

Exhibits KAR-7, 8 & 9.

The identified materials and testimony are the purest form of hearsay, and has multiple reliability and veracity issues. Indeed the witness even attempts to disclaim a portion of it in the very excerpts he adopts it. Such public comment has identified issues for the PUC but is not permitted to control or even taint its evidentiary record. Nothing even shows its applicability to this project beyond mere filing (which proves nothing).

The materials are out of court statements intended to demonstrate the truth of the matters asserted. No exception is cited. SOAH has consistently excluded such materials in PUC certification proceedings. See e.g. PUC Docket No. 28541, SOAH Dkt. No. 473-04-3555, *Application of the City of Castroville*, Order No. 16 at 2 (October 6, 2004); PUC Docket No. 20827, SOAH Dkt. No. 473-99-1310, *Application of LCRA*, Order No. 19 at 4 (February 24, 2000).

III.

Conclusion and Request for Relief

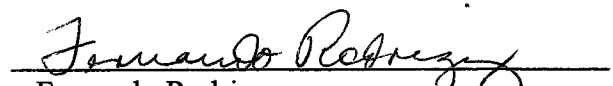
WHEREFORE, PREMISES CONSIDERED, LCRA TSC respectfully requests that the identified testimony of Karl A. and Mary B. Ransleben be stricken. LCRA TSC also requests all other relief to which it may show itself entitled.

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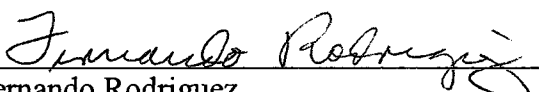
By:


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 e-mail, facsimile, first-class, U.S. mail, postage prepaid, overnight delivery, or by hand delivery.



Fernando Rodriguez