

Control Number: 37448



Item Number: 684

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APPLICATION OF LCRA	§	PUBLIC UTILITY COMMISSION
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND ITS CCN	§	
FOR THE GILLESPIE TO NEWTON 345	§	
KV CREZ TRANSMISSION LINE IN	§	OF TEXAS
GILLESPIE, LLANO, SAN SABA,	§	
BURNET, AND LAMPASAS COUNTIES,	§	
TEXAS	§	

YANCEY CREEK RANCH, L.P.'S
RESPONSE TO LCRA TSC'S APPEAL OF ORDER NO. 10

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Yancey Creek Ranch, L.P. ("Yancey Creek") files this response to LCRA TSC's appeal of the portion of Order No. 10 granting Yancey Creek's motion to compel. LCRA TSC's appeal was filed January 13, 2009. Given the intervening weekend and holiday, this response is timely filed.

I. Introduction

LCRA TSC's appeal of Order No. 10 complains that Yancey Creek's request for information ("RFI") YC 1-7 is not narrowly tailored to lead to the discovery of relevant and admissible evidence. LCRA TSC's Appeal at 6-7. Yancey Creek, which is not on the preferred route, has asked one set of eight RFIs. Only one of Yancey Creek's RFIs is at issue—YC 1-7. Question YC 1-7 reads as follows:

See EA at page 1-6. Please identify all communications with USFWS regarding potential impacts to endangered species. To the extent not already provided in LCRA's Application or Environmental Assessment, please provide a copy of such communications and all recordings, notes or other documents pertaining thereto.

This RFI was prompted by and directed to a statement made by LCRA TSC in its EA regarding communications with the United States Fish and Wildlife Service ("USFWS"). See LCRA TSC's

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Application. Attachment 1, at p. 1-6. Accordingly, Yancey Creek limited the request to “communications with USFWS regarding potential impacts to endangered species.”

LCRA TSC disingenuously groups Yancey Creek’s RFI YC 1-7 with a number of other RFIs filed by another intervenor, *see* LCRA TSC’s Appeal at 4-5, and makes much ado about the burdens associated with responding to all ten questions, as if there was some collusion associated with the propounding parties. Any such implication is groundless and LCRA TSC alleges nothing supporting such a conclusion. Moreover, while LCRA TSC continues to pour resources into resisting disclosure related to this RFI, it has not attempted to demonstrate that the expense or difficulty in providing the information is unreasonable.

Once the underbrush is cleared away, it is apparent that LCRA TSC’s objection is limited to the scope and relevance of the information sought by YC 1-7. *See* LCRA TSC’s Appeal at 3-8. LCRA TSC asks the parties, the ALJ, and the Commission to take its word that the documents are not relevant and could not possibly lead to discovery of admissible evidence. Yet, LCRA TSC does not, and to the undersigned’s knowledge never has, offered to submit the documents for *in camera* review. The ALJ’s ruling compelling disclosure of this information was correct, and should be upheld by the Commission.

II. Discovery Standards

A party may seek discovery of information that is relevant to the subject of the proceeding, including inadmissible evidence, as long as the request is reasonably calculated to lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” TEX. R. EVID. 401.

III. YC 1-7 is Narrowly Tailored to Lead to Discovery of Admissible Evidence

YC 1-7 was prompted by LCRA TSC's statement at page 1-6 of its EA that it "has contacted and begun discussions with FWS to determine an appropriate regulatory mechanism under the Endangered Species Act to address potential impacts to endangered species resulting from the construction of this project." Borrowing language from this statement, Yancey Creek limited its RFI to communications with USFWS regarding "potential impacts to endangered species." Yancey Creek's request is narrowly tailored to seek information related to this statement in the EA.

While Yancey Creek is unable to determine, without seeing the documents requested, whether the contents contain or would lead to admissible evidence (on cross examination, for instance), it is reasonable to anticipate (or even expect) that communications between LCRA TSC and USFWS about procedures to address impacts to wildlife may contain information about impacts to wildlife. Such impacts are clearly at issue in this case. TEX. UTIL. CODE § 37.056(c)(4); Preliminary Order at 4. Numerous parties in this proceeding, including LCRA TSC, have prefiled testimony addressing impacts to endangered species. If the discussions with USFWS were wholly irrelevant, it is doubtful LCRA TSC would have mentioned them in its EA. Moreover, the information is not sacrosanct merely because it may not be specific to Yancey Creek's property, or that of any other particular intervenor. The bottom line is that information regarding overall impacts to endangered species has the tendency to make the existence of some disputed fact regarding those impacts more or less likely. TEX. R. EVID. 401. The information may also have the tendency to differentiate the potential impacts between alternate routes. YC 1-7 therefore seeks information relevant to this proceeding.

Without any record or factual support, LCRA TSC apparently contends that Yancey Creek may be attempting to litigate LCRA TSC's ability to comply with federal law in this proceeding.

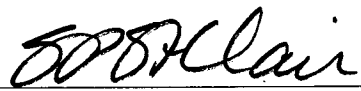
LCRA TSC's Appeal at 6. Yancey Creek has no such intentions. As YC 1-7 makes clear, Yancey Creek merely seeks information regarding the project's potential impacts to endangered species that may be reflected in LCRA TSC's communications with USFWS. The ALJ correctly ordered LCRA TSC to respond to YC 1-7. Little explanation is needed to justify ordering the production of documents so obviously relevant to a disputed issue in this proceeding.

Attempting to deflect the relevance of this information, LCRA TSC unilaterally re-characterizes the issues related to endangered species to: "the extent that crossing potential species habitat results in mitigation costs." LCRA TSC's Appeal at 7. This attempt to circumscribe the Commission's inquiry should be rejected. While mitigation costs may be the issue LCRA TSC is most concerned about, Yancey Creek's RFI seeks information regarding the potential impacts themselves. YC 1-7 simply and directly requests copies of communications between USFWS and LCRA TSC regarding potential impacts to endangered species. LCRA TSC's objection was properly overruled and its appeal of Order No. 10, as it regards Yancey Creek's RFI, should be denied.

WHEREFORE, PREMISES CONSIDERED, Yancey Creek Ranch, L.P., respectfully requests that the Commission deny LCRA TSC's appeal of Order No. 10 as to Yancey Creek and grant Yancey Creek such other and further relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and complete copy of the foregoing was served on all parties of record in accordance with the orders in this case and Public Utility Commission Procedural Rule 22.74, on January 19, 2010.


Shawn P. S. Clair