Control Number: 37448

Item Number: 713

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

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, TEXAS	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

POINT PEAK'S MOUNTAIN RESORT'S RESPONSE TO LCRA TRANSMISSION SERVICES CORPORATION'S OBJECTION AND MOTION TO STRIKE PREFILED TESTIMONY OF POINT PEAK MOUNTAIN RESORT WITNESS BARBARA RAE BARRON

COMES NOW Point Peak Mountain Resort ("Point Peak") and pursuant to P.U.C. Proc. R. 22.225 files its Response to LCRA Transmission Services Corporation's ("LCRA TSC") Objection to and Motion to Strike the Direct Testimony of Barbara Rae Barron ("Mrs. Barron"). LCRA TSC objected to portions of the testimony of Mrs. Barron and moved to strike portions of her direct written testimony filed on January 7, 2010. The Procedural Schedule in this docket specifies that responses to objections are due on January 20, 2010; this response is timely filed.

I.

LCRA TSC's belief that Mrs. Barron's testimony is Unqualified Opinion Testimony

LCRA TSC objects to the following testimony of Mrs. Barron's testimony (Mrs. Barron's testimony is marked hereto and attached as Exhibit A) as unqualified opinion testimony on page 7, lines 13-15 which state:

"4) safety concerns from lightning strikes (Point Peak almost same elevation as the proposed transmission line); and

5) safety concerns from electric/magnetic fields of the proposed transmission line."

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Mrs. Barron only cites (4) and (5) as two of five general concerns she has about the impact to her property from the construction and existence of the transmission line if it were placed on her property. These statements are not opinions but statements of personal concerns Mrs. Barron possesses regarding the placement of lines on or near Point Peak. These statements were not asserted as an expert witness concerning lightning strikes or electric/magnetic fields, but as a property owner with several concerns regarding the placement of the transmission lines on or near Point Peak. Mrs. Barron has been a geologist for more than 20 years, and any expert testimony offered by Mrs. Barron will be limited to the field of geology.

LCRA TSC objects to the following testimony of Mrs. Barron's testimony as unqualified opinion testimony on page 7, lines 20-22 which state:

> Specifically, I believe the December 23 letter from the Texas Parks and Wildlife Department, Item No. 446 filed in this Docket describes the reasons I specifically support GN6 (see EXHIBIT BRB-1).

This statement is not an expert opinion expressed by Mrs. Barron. She is citing the issues found in the December 23 letter as the same reasons she supports Route GN6 over Route GN11. This statement was not asserted as an expert witness concerning the issues presented in the December 23 letter, but as a property owner with several concerns regarding the placement of the transmission lines on or near Point Peak. Mrs. Barron is only stating that she and the December 23 letter express the same reasons for supporting Route GN6. Mrs. Barron has been a geologist for more than 20 years, and any expert testimony offered by Mrs. Barron will be limited to the field of geology.

LCRA TSC objects to the following of Mrs. Barron's testimony as allegedly unqualified opinion testimony on page 23, lines 14-16 which state:

1. I believe there was no proper environmental study done;

2. The December 23, 2009 Texas Parks and Wildlife Department letter raises several environmental concerns;

These statements are not expert opinions expressed by Mrs. Barron. She is stating a personal opinion regarding several issues of concern in this Docket including her personal opinion that she believes no proper environmental study was performed, and there are several environmental issues raised in the December 23 letter. These statements were not asserted as an expert witness, but as a property owner with several concerns regarding the placement of the transmission lines on or near Point Peak. Mrs. Barron has been a geologist for more than 20 years, and any expert testimony offered by Mrs. Barron will be limited to the field of geology.

LCRA TSC also objects to the following testimony of Mrs. Barron:
"Section V in its entirety, Page 10 line 17 through page 23, line 3.
Section VII, Lines 6-11."

LCRA states that Mrs. Barron applies an incorrect definition of habitable structure that destroys the foundation of testimony. Point Peak respectfully disagrees and asserts that it is LCRA TSC which is using an incorrect definition of habitable structure which has resulted in LCRA's incorrect counting of habitable structures in this Docket.

The definition in question is PUC Substantive Rule §25.101(b)(3) which is also stated in Mrs. Barron's written testimony on Page 11, Lines 5 through 10. The definition states:

"Structures *normally* inhabited by humans or *intended* to be inhabited by humans *on a daily or regular basis*. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools." (*emphasis added*)

LCRA TSC claims in its responses to discovery that its agent, PBS&J used several methods to determine the number of affected inhabitable structures. See *LCRA Transmission*

Services Corporation's Response to Point Peak Mountain Resort LLC's First Request for Information (Item No. 293) (attached hereto as Exhibit B*), Question and Response; 1-6 which states "PBS&J staff performed field reconnaissance from publically accessible areas such as streets, roads, and highways to determine, where possible, whether a structure appeared to be habitable according to the definition contained in the PUC's CCN application. Where access or visibility did not allow such a determination, PBS&J staff used recent digital aerial photography, TxDOT county highway maps, and USGS topographic maps to assist in the determination.*

However, at the December 3, 2009 Second Pre-Hearing and Technical Conference LCRA and PBS&J admitted that the entirety of their designation of a structure as a "habitable structure" was based upon a desktop review of "available" satellite images and/or aerial photography. LCRA and PBS&J admitted that they thus did not determine whether or not items identified by them were intended to be inhabited or were in fact inhabited. They also admitted that they did not know if the structures had utility services.

In contrast, Mrs. Barron performed actual field reconnaissance and personally visited and took photographs of the affected inhabitable structures on Monday, December 28, 2009 and Wednesday, December 30, 2009. All her observations are based on personal knowledge from her visits to the sites of the structures with the exceptions of those structures she was unable to access because of private property limitation or the non-existence of a structure.

Under the reading of the definition, a structure is not a habitable structure merely by its existence. The rule requires that the structure be:

1. "normally" inhabited by humans;
2. "intended" to be inhabited by humans;

3. on a "daily" basis; or

4. on a "regular" basis.

Although LCRA TSC asserts that the mere existence of a "roof-top" from images represent a habitable structure pursuant to Rule 25.101(b)(3), it is ultimately a fact question that should be considered by the presiding officer in this Docket. Mrs. Barron, through her personal time and effort, is providing additional factors that should be considered to determine whether or not a structure cited by LCRA TSC as a habitable structure is actually habitable as defined in Rule 25.101(b)(3). It would seem that LCRA TSC's objections to this information is purely based on the fact that one person, Mrs. Barron, was able to perform a more thorough investigation of the structures on Segments C14 and C17 than the entire LCRA, its employees, and its consultants, PBS&J. Instead of accusing Mrs. Barron of applying an incorrect definition for habitable structure, the LCRA TSC should have used this opportunity to personally thank Mrs. Barron for a job well-done in obtaining information regarding these structures that LCRA chose not to obtain.

II.

Expert Opinion Testimony

LCRA TSC objects to the following testimony of Mrs. Barron's testimony as "inappropriate expert opinion testimony" on page 10, lines 14-16 which state:

> In my opinion, LCRA TSC would be better served utilizing segments C14 and C17 based on the terrain and rock composition of the impacted land that would be encountered in the construction of the transmission line for this project.

LCRA argues that the information is not admissible because the witness "is not an expert with regard to the relative differences of placement of transmission structures in different types

of rocks" and because the witness "provides no basis to examine the methodology and analysis to reach the conclusion."

Point Peak asserts the testimony is admissible because Mrs. Barron is not asserting the statement as a expert with regard to the relative differences of "placement of transmission structures in different types of rocks", but the testimony is expert testimony offered by Mrs. Barron regarding the soils and rocks that would be encountered on any proposed transmission line. This expert opinion regarding such soils and rock is in direct response to LCRA TCS' testimony regarding soil and rock composition. *See Direct Testimony and Exhibits of Curtis D. Symank,* (attached hereto and marked as Exhibit C) *page12, line 11 to Page14 line 2; Page 14, line 27 to Page 16, line 8; Page 20, line 18 to Page 21, line 16; Page 27, line 17 to Page 28, line 2. Also see LCRA Transmission Services Corporation's Response to Point Peak Mountain Resort LLC's Second Request for Information* (attached hereto and marked as Exhibit D) *(Item No. 482), Question and Response to 2-3; Question and Response 2-22; and Question and Response 2-23.*

LCRA TSC does not challenge the expertise and education of Mrs. Barron in their objection or the personal experience Mrs. Barron possesses as a geologist for almost 20 years. As stated in the direct filed testimony for Mrs. Barron (Item No. 575 in this Docket), she graduated from the University of Texas at Austin with a Bachelor's Degree (B.S.) in Geology in 1983 and a Master's Degree (M.A.) in Geology in 1985. Mrs. Barron is a licensed Professional Geologist in the State of Texas, license number is 5696. From September 3, 1985 to March 1, 2004, Mrs. Barron worked for ExxonMobil. She spent almost the entirety of her career in exploration as a User Support Geologist assisting and training exploration professionals in the use of interpretive tools. When she resigned from ExxonMobil, her final title was Senior

Exploration Geologist. In addition, Mrs. Barron has been very involved in real estate purchases in the areas to be effected by the placement of the transmission line in this Docket. This has provided Mrs. Barron numerous occasions to perform field visits to numerous properties in the areas to be effected by the placement of the transmission line including personal experience with the soils and rock compositions of the terrain.

In 1993, the United States Supreme Court reviewed the Federal Rules of Evidence and addressed the admissibility of scientific evidence. *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579, 588 (1993). The protections Daubert provides are "not as essential" in a case where, as here, the judge sits in place of the jury as trier of fact. *Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir. 2000). The court is well qualified to weigh expert testimony without the concerns of confusion or prejudice that would surround admission of such evidence to a jury.

In 1995, the Texas Supreme Court adopted Daubert and set forth the Texas state court requirements to admit an expert's testimony. *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). In *Robinson* , the Texas Supreme Court recognized that Texas Rule of Evidence 702 (which is based upon the Federal Rules of Evidence) contains three requirements for the admission of expert testimony: (1) the witness must be qualified; (2) the proposed testimony must be based upon, derived from or validated by scientific knowledge; and (3) the testimony must assist the trier of fact to understand the evidence or to determine a fact in issue. See id. at 556. In general, the proposed testimony must be reliable and relevant. See id. at 550. The trial court acts a "gatekeeper", that is, it is charged with making the preliminary determination of whether the proffered testimony meets these standards. See Robinson, 923 S.W.2d at 557. Ms. Barron's testimony meets these standards.

Also, the factual basis of an expert's opinion generally relates to the weight to be given the opinion, not its admissibility. *Margolies v. McCleary, Inc.*, 447 F.3d 1115, 1120-21 (8th Cir. 2006); see *Primrose Oper. Co. v. National Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004). Opinion testimony should not be excluded just because it accepts another version of disputed facts. *Micro Chem v. Lextron*, 317 F.3d 1387, 1392 (Fed. Cir. 2003); *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 249 (5th Cir. 2002). The focus of the gatekeeper analysis is on the "principles and methodology, not on the conclusions they generate." *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 595 (1993); *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004). Moreover, even if experts disagree, that does not make one expert's opinions inadmissible. *Glaser v. Thompson Med., Co.*, 32 F.3d 969, 975 (6th Cir. 1994). "When facts are in dispute, experts sometimes reach different conclusions." *Pipitone v. Biomatrix, Inc.*, 288 F.3d at 249, citing Advisory Notes to Rule 702. The fact finder is entitled to determine which set of facts are accurate. Id.

The court is well qualified to weigh Ms. Barron's expert testimony against those of the other geological experts in this proceeding, if any.

Even if the hearsay rule was relevant, it would still allow Ms. Barron's testimony.

The Texas Rules of Evidence allow in Rule 802 and Rule 803 for the admission of certain information that might not otherwise be admitted. In addition, as an expert, Mrs. Barron can utilize certain documents and analyze them to reach a conclusion.

Texas Rule of Evidence 803(17) is an exception to the hearsay rule which allows market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations. See *Lewis v. Southmore Sav. Ass'n*, 480 S.W.2d 180, 186 (Tex. 1972). An expert, when qualified as such, may give his

opinion and relate sources which are customarily and usually relied upon by experts in the field upon which he partially relied in forming his opinion, together with his own personal knowledge, which support or tend to support that opinion. See *Loper v. Andrews*, 404 S.W.2d 300 (Tex.1966*); State of Texas v. Oakley*, 163 Tex. 463, 356 S.W.2d 909 (Tex.1962); *Martin v. Wholesome Dairy, Inc.*, 437 S.W.2d 586 (Tex.Civ.App.1969 ref'd n. r. e.); *Bryant v. Trinity Universal Insurance Company*, 411 S.W.2d 945 (Tex.Civ.App.1967 ref'd n. r. e.); *Coffee v. William Marsh Rice University*, 408 S.W.2d 269 (Tex.Civ.App.1966 ref'd n. r. e.); *Schooler v. State*, 175 S.W.2d 664 (Tex.Civ.App.1943 ref'd w. o. m.); McCormick and Ray, Texas Law of Evidence, Secs. 835, 1400, and 1404; Expert and Opinion Evidence, Vol. 31, Am.Jur.2d, Secs. 26, 27.

Texas Rule of Evidence 803(18) allows to the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. See *Webb v. Jorns*, 530 W.W.2d 847, 856-857 (Tex. Civ. App.-Fort Worth 1975, writ ref'd n.r.e.).

As LCRA TSC makes no objection to the inclusion of Exhibits BRB 2 – BRB 12, Mrs. Barron is able to utilize those exhibits to come to the conclusion cited on Page 10, lines 14-16 which LCRA TSC objects.

III.

Conclusion and Request for Relief

WHEREFORE, PREMISES CONSIDERED, Point Peak respectfully requests that the objections and request by LCRA TSC to strike certain prefiled direct testimony of Mrs. Barron be denied. Point Peak also requests all other relief to which it may show itself entitled.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon all counsel of record electronically, by facsimile transmission, and/or by certified mail return receipt requested on this the 20th day of January, 2010:

_____
David Weber

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

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, TEXAS	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY OF

BARBARA RAE BARRON

ON BEHALF OF

POINT PEAK MOUNTAIN RESORT

January 7, 2010

Exhibit A

DIRECT TESTIMONY OF BARBARA RAE BARRON
ON BEHALF OF
POINT PEAK MOUNTAIN RESORT
SOAH DOCKET NO. 473-10-1097
PUC DOCKET NO. 37448

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EXHIBITS

Exhibit BRB-1 (TP&WD letter, December 23 2009)
Exhibit BRB-2 (Map - www.geology.uprm.edu.Morelock/thcgeol.htm)
Exhibit BRB-3 (Map – Roadside Geology of Texas)
Exhibit BRB-4 (Map – Bureau of Economic Geology)
Exhibit BRB-5 (Information Llano Uplift - Roadside Geology of Texas, pgs. 121-124, 154-156, 158-160)
Exhibit BRB-6 (Table of Habitable Structures from EA)
Exhibit BRB-7 (Attachment 4 – Detail Map 6.3 Western Sec)
Exhibit BRB-8 (Attachment 4 – Detail Map 6.2 Western Sec)
Exhibit BRB-9 (Attachment 4 – Detail Map 6.2 Eastern Sec)
Exhibit BRB-10 (Attachment 4 – Detail Map 7.2 Western Sec)
Exhibit BRB-11 (Attachment 4 – Detail Map 7.1 Eastern Sec)
Exhibit BRB-12 (Spreadsheets of C14 and C17 properties)

The height of the mountain at the peak is approximately 1,440 feet. The proposed distance of transmission easement from the mountain base is less than 2,000 feet.

Q. Are there any proposed routes which directly impact the property?

A. Yes, the preferred route G11. Point Peak Mountain Resort is on link C16. There are alternate routes including link C16 which are the routes GN2, GN3, GN4, and GN5.

Q. Do you have any concerns about the impact to the property from the construction and existence of the transmission line?

A. Yes, I have several concerns about the proposed transmission line and its impact on our property:

1) loss of property value (property just purchased 11/30/2007);
2) loss of choice in future property use (less chance of development);
3) loss of Lake Buchanan view (blocked by proposed transmission line);
4) safety concerns from lightning strikes (Point Peak almost same elevation as the proposed transmission line); and
5) safety concerns from electric/magnetic fields of the proposed transmission line.

Q. Do you personally support another route or routes for the transmission line?

A. Yes, I support the use of alternate routes GN6, GN7 or GN8.

Q. Why do you support that route or routes?

A. I support these alternate routes because I believe that LCRA should build this transmission line on existing ROW. Specifically, I believe the December 23 letter from the Texas Parks and Wildlife Department, Item No. 446 filed in this Docket describes the reasons I specifically support GN6 (see EXHIBIT BRB-1).

IV. EVALUATION OF GEOLOGY

Colorado River in locations that will not be traversed by construction equipment, requiring drive of many miles for construction crews to reach the opposite side."

The following two diagrams show the geology of the project area. The first diagram, EXHIBIT BRB-3, comes from the book, Roadside Geology of Texas, by Darwin Spearing, page 158. It gives a basic look at the rocks outcropping the area of C14 and C17 as described below.

The second geologic diagram, EXHIBIT BRB-4, and the three pages of rock descriptions are a much more detailed geologic look at the project area between the town of Llano and town of Burnet. The source is from The University of Texas at Austin Bureau of Economic Geology. The map and the accompanying rock descriptions are from the Geologic Atlas of Texas – Llano Sheet, map and pages 8, 9 and 11. I have also reviewed certain references to the geology of the area as outlined form the Roadside Geology of Texas, by Darwin Spearing, pages x-x (see EXHIBIT BRB-5).

In my opinion, LCRA TSC would be better served utilizing segments C14 and C17 based on the terrain and rock composition of the impacted land that would be encountered in the construction of the transmission line for this project.

V. EVALUATION OF ERRORS FOR NUMBERS OF HABITABLE STRUCTURES ON LINKS C14 AND C17

Q. Are you aware that LCRA TSC selected Route GN11 because LCRA TSC believes that the alternative routes have more habitable structures located on those routes than Route GN 11?

A. Yes, I am aware that was one factor in the selection of Route GN11 as the preferred route by LCRA TSC.

Q. Do you believe that to be correct?

A. No, and I based that on my personal observations along C14 and C17 of structures that LCRA TSC consider habitable structures.

Q. Are you aware of the definition of "habitable structure" found in the PUC rules?

A. Yes, I am aware of the definition of "habitable structure" found in PUC Substantive Rule §25.101(b)(3), which states habitable structures are "Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis. Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures , churches, hospitals, nursing homes, and schools."

Q. Can you explain your personal observations and concerns about the errors used by LCRA TSC in determining the number of habitable structures ("HS") along segments C14 and C17?

A. Yes. There are 8 HS at or near the 500 ft. from the proposed transmission ROW easement, 8 VACANT HSs, 7 CAMPER HSs & 5 MISC./NO IMP HSs for a total of 28 habitable structures (HSs) in question that lowers the total number of HS to 76 on C14 & C17. If the habitable structures on the 500 ft. ROW centerline, not already deleted based on other criteria, were deleted then the number would go from 76 to 73 (deleting HSs 139, 141-143, 144). In addition, the vast majority of the HSs identified by LCRA TSC were built next to the existing transmission lines. Therefore, it is hard to see how these properties would be adversely affected by the installation of the proposed new line.

The way data are expressed on LCRA TSC maps and spreadsheets implies a fewer number of habitable structures on preferred route GN11 than really exist. When you look

Of the 5 NO/MISC. IMPROVEMENT HSs, pictures of most (4) the HSs (HSs #55, 141 - 143) are in EXHIBITS BRB 7 – EXHIBITS BRB 11. The others (HSs #111 & #113) simply do not exist.

VII. CONCLUSIONS

Habitable Structures – Conclusion – Links C14 & C17

In conclusion, there are 8 HS at or near the 500 ft. from the proposed transmission ROW easement, 8 VACANT HSs, 7 CAMPER HSs & 5 MISC./NO IMP HSs for a total of 28 habitable structures (HSs) in question that lowers the total number of HS to 76 on C14 & C17. If the habitable structures on the 500 ft. ROW centerline, not already deleted based on other criteria, were deleted then the number would go from 76 to 73 (deleting HSs 139, 141-143, 144).

Q. Do you have any additional issues you wish to discuss regarding Project #37448?

A. There are several additional issues:

1. I believe there was no proper environmental study done;

2. The December 23, 2009 Texas Parks and Wildlife Department letter raises several environmental concerns;

3. The process for this docket is extremely short which has resulted in quick work, usually not correct, provided by LCRA TSC & PBS&J which is evident by three errata being filed by LCRA TSC in this docket as of this date; and

4. The misconception that there are million dollar homes along links C14 and C17 that should be avoided because of investment and the incorrect numbers of habitable structures. In reality, the HSs in links C14 & C17 are commercial structures, several campers which should not be included in the number of HSs, and very few SFRs.

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

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, TEXAS	§	**BEFORE THE**
	§	
	§	**STATE OFFICE OF ADMINISTRATIVE**
	§	
	§	**HEARINGS**
	§	

LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO POINT PEAK MOUNTAIN RESORT LLC'S FIRST REQUEST FOR INFORMATION

COMES NOW LCRA Transmission Services Corporation (LCRA TSC) and files this, its Response to Point Peak Mountain Resort LLC's First Request for Information. This Response is timely filed. LCRA TSC agrees and stipulates that all parties may treat these responses as if the answers were filed under oath.

Respectfully submitted,

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Exhibit B

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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 the propounding party (pursuant to Order No. 1) on the 14th day of December 2009, by email, facsimile, First-Class U.S. mail, or by hand delivery.

_____
William T. Medaille

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

APPLICATION OF LCRA	§	**BEFORE THE**
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND ITS	§	
CERTIFICATE OF CONVENIENCE AND	§	**STATE OFFICE OF ADMINISTRATIVE**
NECESSITY FOR THE GILLESPIE TO	§	
NEWTON 345 KV CREZ	§	
TRANSMISSION LINE IN GILLESPIE,	§	**HEARINGS**
LLANO, SAN SABA, BURNET, AND	§	
LAMPASAS COUNTIES, TEXAS		

LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO
POINT PEAK MOUNTAIN RESORT LLC'S FIRST REQUEST FOR INFORMATION

Question 1-6:

Did LCRA TSC, PBS&J or any other person or entity employed by LCRA TSC, perform any field or site visits to actually determine if a structure was "habitable"?

Response 1-6:

Yes, PBS&J staff performed field reconnaissance from publically accessible areas such as streets, roads, and highways to determine, where possible, whether a structure appeared to be habitable according to the definition contained in the PUC's CCN application. Where access or visibility did not allow such a determination, PBS&J staff used recent digital aerial photography, TxDOT county highway maps, and USGS topographic maps to assist in the determination.

Preparer: Rob Reid	Title: Principal Project Director, PBS&J
Co-Sponsor: Rob Reid	Title: Principal Project Director, PBS&J
Co-Sponsor: Dennis Palafox	Title: Sr Regulatory Case Mgr, LCRA

PUC DOCKET NO. 37448

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	§	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

DIRECT TESTIMONY AND EXHIBITS

OF

CURTIS D. SYMANK, P.E.

ON BEHALF OF

APPLICANT
LCRA TRANSMISSION SERVICES CORPORATION

October 28, 2009

Exhibit C

PUC DOCKET NO. 37448
DIRECT TESTIMONY AND EXHIBITS OF CURTIS D. SYMANK

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EXHIBITS

nificantly less structural steel, and cost significantly less than other structure types (*i.e.*, significantly lower procurement costs and significantly lower total installed costs).

The majority of public comments indicated a pronounced preference for single pole construction, and lattice towers can provide the benefit of reduced visibility when located in background views. However, since aesthetics are subjective and difficult to weigh, LCRA TSC selected double-circuit lattice towers as the typical structure type based on quantifiable factors, cost (an economic factor) and weight (which relates to economics and efficiency).

Q. WHAT FACTORS WERE IMPORTANT IN LCRA TSC'S ESTIMATED COSTS TO CONSTRUCT THE STRUCTURE TYPES CONSIDERED FOR THE TRANSMISSION LINE?

A. Geologic conditions and terrain were both important in LCRA TSC's estimated costs to construct the structure types considered for the transmission line. ROW widths did not vary among structure types, since LCRA TSC's proposed lattice towers and alternative structure types are capable of being constructed in LCRA TSC's minimum 100-feet wide 345-kV easement.

Geologic conditions were important because they affected foundation costs. Two primary geologic types would be encountered along the routes for this project along with a minimal amount of sand which has been accounted for in the estimates. The two primary geologic types are: 1) cretaceous limestone and 2) crystalline rocks and hard limestone. Crystalline rocks in this project area include granite and other igneous rocks. As compared to foundations installed in other geologic types (*i.e.*, clays or mixed clays and limestone), LCRA TSC has estimated higher unit costs (per cubic yard) for foundations in cretaceous limestone and even higher unit costs for foundations in crystalline rocks and hard limestone.

The impact on cost due to the different geological conditions is reflected in the estimates for the evaluated routes. This impact on cost is also reflected in the table of representative costs and weights for different structure types discussed in this testimony and included as Exhibit CDS-1.

Geologic conditions affect lattice towers and other structure types (*i.e.*, tubular steel poles and tower poles) differently, since four smaller foundations would be installed for each lattice tower compared to one large foundation for each tubular steel pole or tower pole. LCRA TSC estimated the costs for structures in cretaceous limestone and in crystalline rocks and hard limestone. Compared to lattice tower foundation installation costs, the costs for foundations for tubular steel poles and for tower poles are significantly higher due to larger volumes of concrete required and the sizes of holes required in the more challenging limestone and crystalline rocks present in this project location.

Terrain was important because, as compared to construction in a different project area with more level terrain, rugged terrain increases construction costs for structure installation due to increased construction difficulties (*i.e.*, more difficult access and equipment maneuvering). This transmission line project includes construction over some of the more difficult terrain in the LCRA TSC system due to the presence of harder limestone and granite, which in some locations is at the surface with little or no topsoil. Traversing the ROW is also difficult in some locations due to the presence of outcrops or very large granite cobbles which cannot be traversed, requiring off ROW access trails and/or additional construction of roads. The project will also cross the Llano and Colorado Rivers in locations that will not be traversed by construction equipment, requiring drives of many miles for construction crews to reach the opposite side.

However, easement widths did not vary among the structure types, LCRA TSC's proposed 345-kV lattice towers are capable of being constructed in the narrowest ease-

ment for the 345-kV transmission line, being 100 feet in width (*i.e.*, the same 100-feet minimum width used by LCRA TSC for either tubular poles or tower poles

Q. DID LCRA TSC CONSIDER PRESTRESSED CONCRETE POLES FOR THE TRANSMISSION LINE?

A. LCRA TSC considered and rejected prestressed concrete poles due to height and strength requirements. Prestressed concrete poles would not be feasible for the CREZ 345-kV double-circuit-capable transmission line. Prestressed concrete poles are comprised of spun concrete, reinforced with steel tendons and reinforcing bars, and are directly embedded into the earth. Further, since LCRA TSC's proposed lattice towers can be constructed, operated, and maintained in the narrowest 345-kV easement at 100 feet in width, prestressed concrete poles would not reduce ROW widths.

Prestressed concrete poles, similar to those used for a private 345-kV single-circuit transmission line constructed by NextEra in the Hill Country, would not be feasible for the 345-kV double-circuit-capable transmission line which is the subject of this CCN application and would present no easement advantage. First, these prestressed concrete poles would be too short to provide adequate electrical clearances in a double-circuit-capable configuration and would not be strong enough to support two circuits. Second, in practical terms, taller and stronger prestressed concrete poles are not available from the manufacturer. Third, the private 345-kV single-circuit line constructed by NextEra appears to have been constructed in a cleared ROW of 120 feet, which is wider than LCRA TSC's minimum width of 100 feet for lattice towers or poles. Fourth, the private line also appears to require additional easements for guy wires when the concrete structures turn angles.

Q. DID LCRA TSC CONSIDER PROPOSING UNDERGROUND CONSTRUCTION FOR THE TRANSMISSION LINE?

A. The ERCOT CTO Study did not contemplate underground construction, based on its specification of overhead conductors ("1590 ACSR"), reference to lattice towers (e.g.,

single-circuit, double-circuit-capable 345-kV transmission line using bundled 1590 ACSR conductor on double-circuit towers), and the magnitude of its estimates.

LCRA TSC also eliminated underground consideration early in the preliminary screening process for the CREZ 345-kV transmission line primarily due to costs and technical challenges. Underground construction of the CREZ 345-kV transmission line would be very costly and would face severe technical challenges in areas with rugged terrain.

In another recent LCRA TSC CCN project, PUC Docket No. 33978 (Clear Springs to Hutto 345-kV transmission line) with more favorable substrate and topography, the estimated cost for an underground 345-kV line was $30 to $40 million per mile. In this project, the substrate is less favorable because it includes crystalline rocks, hard limestone, and cretaceous limestone and the rugged terrain is not favorable due to high pulling tensions. For these reasons, underground construction for the CREZ 345-kV transmission lines is likely not feasible in many areas. Even where it would be feasible it would be at least an order of magnitude more costly.

Also, underground cable failures that require replacement cables would negatively affect the availability of the line, especially if replacing the cables results in outage durations of weeks or months to fabricate and install the replacement cables.

Because the additional costs and technical difficulties are not reasonable and necessary to provide reliable and adequate electric service for the CREZ 345-kV transmission line, LCRA TSC proposes to construct this project using overhead construction, being a more cost effective and technically feasible means of providing reasonable and adequate electric service.

Q. DOES LCRA TSC HAVE EXPERIENCE WITH CONSTRUCTING THESE TYPES OF STRUCTURES IN THE HILL COUNTRY OF TEXAS?

A. Yes, LCRA TSC owns approximately 184 miles of lattice tower structures and 45

miles of tubular steel poles in the vicinity of this project, in Burnet, Gillespie, Kerr, Lampasas, Llano, San Saba, and Kendall counties. Of those lattice tower miles, LCRA TSC owns approximately 24 miles of 345-kV lattice tower structures near the cities of Boerne and Comfort in Kendall County. LCRA TSC also owns approximately 21 miles of 345-kV tubular steel poles in Kendall County. LCRA TSC found that the construction of these 345-kV tubular steel poles in Kendall County was more expensive than anticipated at that time and presented a variety of construction challenges in rugged terrain.

Also, LCRA TSC owns 138-kV lattice towers near the City of Fredericksburg and in Burnet, Gillespie, Kerr, Lampasas, Llano, San Saba, and Kendall counties, providing additional experience and operating history that helped inform our decisions to propose constructing this project on lattice towers.

The typical conductor-phase spacing for tangent structures of all types will be 28 feet horizontal and 24 feet vertical. The typical shield-to-conductor spacing for lattice towers will be 5 feet horizontal and 27 feet vertical, for tubular steel poles it will be 12 feet horizontal and 11 feet vertical, and for tower poles it will be 5 feet horizontal and 27 feet vertical.

Q. ARE LCRA TSC'S PROPOSED TYPICAL 345-KV DOUBLE-CIRCUIT LATTICE TOWERS TALLER THAN 138-KV LATTICE TOWERS OWNED BY LCRA TSC?

A. In general, yes. The typical difference is due to wire spacing and configuration at different voltages. As alluded to above, LCRA TSC has both 138-kV and 345-kV lattice tower transmission lines in our system, with the 345-kV towers generally being the taller. However, two of the tallest lattice towers in LCRA TSC's system are 138-kV single-circuit towers at 232 feet above grade, crossing Lake Travis, west of the City of Austin in Travis County. These 138-kV lattice towers west of the City of Austin exceed the heights of the 345-kV lattice towers near the City of Boerne in Kendall

Q. WHAT COSTS VARY SIGNIFICANTLY IN LCRA TSC'S ESTIMATED COSTS AMONG THE ROUTES FOR THE TRANSMISSION LINE?

A. LCRA TSC's estimated costs for Preferred Route GN11 and alternative routes are summarized in Attachment 3 to the application. The most significant cost variances among the routes estimated for the transmission line are in the ROW acquisition costs and other costs for potential habitat mitigation. Of course, length also affects the routes differently. Routes which utilize significant amounts of existing ROW tend to have lower ROW acquisition costs and lower potential endangered species habitat mitigation costs because of the reduced amount of vegetation removal.

Q. WHAT ARE LCRA TSC'S ESTIMATED COSTS FOR THE TRANSMISSION LINE?

A. LCRA TSC's estimated cost for Preferred Route GN11 is $161.9 million. LCRA TSC's estimated costs for all routes range from $161.0 million to $207.2 million. LCRA TSC's estimated costs for Preferred Route GN11 and other alternative routes are found in Attachment 3 to the application.

Q. HOW DO LCRA TSC'S ESTIMATES FOR THE TRANSMISSION LINE COMPARE WITH THOSE PREPARED BY THE ELECTRIC RELIABILITY COUNCIL OF TEXAS (ERCOT)?

A. ERCOT estimated the "overnight" cost for Gillespie to Newton at $136.5 million and 105 miles in length. LCRA TSC's estimated cost for Preferred Route GN11 is $161.9 million and LCRA TSC's estimated costs for all routes range from $161.0 million to $207.2 million, including costs not contemplated by ERCOT, such as capitalized interest and other costs for mitigation of cleared potential endangered species habitat. Further, LCRA TSC's estimated construction costs are higher due to the difficulties associated with maneuvering equipment in rugged terrain and drilling foundations in harder geologic substrates (cretaceous limestone, crystalline rocks and hard limestone). In addition, LCRA TSC's estimated ROW acquisition costs could be higher in the

Texas Hill Country compared to what LCRA TSC would estimate for ROW acquisition in some other areas.

A summary of estimated costs and estimated costs that may be consider to be comparable to the ERCOT CTO costs is included as Exhibit CDS-2.

Absent capitalized interest and other costs for mitigation of potential endangered species habitat, LCRA TSC's comparable estimated costs for Preferred Route GN11 is $131.2 million and alternative routes GN6, GN7, GN8, and GN10 range from $127.5 million to $135.1 million. Thus, the comparable costs for Preferred Route GN11 and alternative routes GN6, GN7, GN8, and GN10 are actually lower than the ERCOT CTO "overnight" estimate at $136.5, despite LCRA TSC's higher estimated construction costs in rugged terrain and harder geologic substrates (i.e., crystalline rocks and hard limestone) and LCRA TSC's higher estimated ROW acquisition costs in the Texas Hill Country. Although greater than the ERCOT CTO "overnight" estimate, comparable costs for alternative routes GN1, GN2, GN3, GN4, GN5, and GN9 range from $143.6 million to $171.2 million.

In addition to the previously mentioned estimated mitigation costs for potential endangered species habitat, ROW acquisition costs are a significant driver which pushes LCRA TSC's estimates toward or even beyond the ERCOT estimates, since ROW acquisition costs for all routes exceed $400,000 per mile and some exceed $800,000 per mile. Of course, all things being equal, routes using more existing ROW would have lower ROW costs compared to other routes. Notably, LCRA TSC's Preferred Route GN11 uses a significant amount of existing ROW which results in Preferred Route GN11 being among the routes with lower costs for both ROW acquisition and mitigation for potential endangered species habitat. Even so, ROW acquisition costs for LCRA TSC's Preferred Route GN11 and other alternative routes are significant in this case.

the PUC assigned LCRA TSC this and other transmission lines. Other structure types could be used in limited situations.

Q. PLEASE SUMMARIZE THE IMPACT ON COST AND EFFICIENCY, SHOULD THE COMMISSION ORDER LCRA TSC TO CONSTRUCT OTHER STRUCTURE TYPES.

A. Costs and efficiency (*i.e.*, weights) would be adversely affected if the Commission orders LCRA TSC to use tubular steel poles and/or tower poles as typical structures. The impact to cost and weight of raw materials required is dramatic on this project, so the widespread use of tower poles or steel poles will result in higher consumption of raw materials and substantially increase the project costs.

The limited use of steel poles, if ordered by the Commission, will primarily impact cost. Since such impact is dependent on the specific circumstances, its cost impact must be assessed on a case by case basis.

Q. WHAT DOES LCRA TSC CONCLUDE FROM ITS EVALUATION OF COSTS?

A. LCRA TSC's estimated cost for Preferred Route GN11 is $161.9 million, with estimated costs for all evaluated routes ranging from $161.0 million to $207.2 million, as summarized in Attachment 3 to the application.

LCRA TSC's estimated costs include costs not contemplated by ERCOT, such as capitalized interest and other costs for mitigation of cleared potential endangered species habitat. Further, LCRA TSC's estimated construction costs are higher due to the project specific information likely unknown by ERCOT, including higher ROW cost, rugged terrain, and challenging geologic substrates present on this project. Despite the project specific challenges, absent capitalized interest and other costs for mitigation of potential endangered species habitat, LCRA TSC's comparable estimated costs for

Preferred Route GN11 and alternative routes GN6, GN8, and GN10 are less than the ERCOT CTO "overnight" estimate.

Q. DO YOU FIND THE COSTS CONTAINED IN THE APPLICATION TO BE REASONABLE?

A. Yes, I do. I examined the components of the transmission line structure cost estimates and found them to be reasonable and consistent with engineering practices, market conditions in effect on the filing date, and construction in the terrain and geologic substrates found in the project area. Changes in market conditions could increase or decrease costs above or below the estimates contained in the application.

Q. PLEASE SUMMARIZE LCRA TSC'S SCHEDULE FOR THE TRANSMISSION LINE.

A. Transmission line construction is scheduled to be completed by November 2012.

Q. PLEASE SUMMARIZE HOW, TO THE EXTENT PRACTICAL, LCRA TSC WILL HELP MITIGATE THE IMPACT OF CONSTRUCTION OF TRANSMISSION FACILITIES ON AFFECTED LANDOWNERS' PROPERTIES AND WILL ADDRESS PUBLIC CONCERNS REGARDING TRANSMISSION FACILITIES.

A. LCRA TSC will to the extent practical take actions to help mitigate construction impacts by appropriately addressing the following: erosion control measures, returning property to original contours and grades, impact to cultural and natural resources, reseeding of the ROW, impacts to sensitive plant and animal species and their habitats, and requests from directly affected landowners for minor deviations in the approved route to minimize the impact of the proposed project.

Q. WHAT ENGINEERING FACTORS WERE IMPORTANT WHEN LCRA TSC SELECTED THE PREFERRED ROUTE FOR THE GILLESPIE TO NEWTON TRANSMISSION LINE?

A. In addition to habitable structures, environmental, cultural, land use, public input, and

SOAH DOCKET NO. 473-10-1997
PUC DOCKET NO. 37448

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, TEXAS	§	**BEFORE THE**
	§	
	§	
	§	**STATE OFFICE OF ADMINISTRATIVE**
	§	
	§	
	§	**HEARINGS**
	§	

LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO POINT PEAK MOUNTAIN RESORT LLC'S SECOND REQUEST FOR INFORMATION

COMES NOW LCRA Transmission Services Corporation (LCRA TSC) and files this, its Response to Point Peak Mountain Resort LLC's Second Request for Information. This Response is timely filed. LCRA TSC agrees and stipulates that all parties may treat these responses as if the answers were filed under oath.

Respectfully submitted,

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Exhibit D

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By: _____
William T. Medaille

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 the propounding party (pursuant to Order No. 1) on this the 4th day of January 2010, by email, facsimile, First-Class U.S. mail, or by hand delivery.

_____
William T. Medaille

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LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO POINT PEAK MOUNTAIN RESORT LLC'S SECOND REQUEST FOR INFORMATION

Question No. 2-3:

In the response to Question No. 1-1 of William R. Hinckley's First Request for Information, LCRA TSC provided Attachment 2. On page 44 of 49 of Attachment 2, the following was deleted from the final Environmental Assessment report:

"Also, with respect to routes proceeding south of Lake Buchanan, while being among the shorter of the Gillespie to Newton primary routes, (i.e., GN 6, GN 7, and GN 8, these routes have the disadvantage of traversing through areas with very hard granite substrate. Within the last few years, LCRA TSC has had significant experience in this area, rebuilding an existing 138kv transmission line with single pole structures. The granite substrate was difficult to drill to place structures and, in one instance, it took over three weeks to complete one bore hole."

Why was this information deleted in the final Environmental Assessment and what "significant experience" did LCRA TSC obtain?

Response No. 2-3:

The information noted was deleted from the Environmental Assessment because Mr. Symank provided it in his direct testimony. LCRA TSC constructed several projects in recent years in the Buchanan Dam area, notably the construction of the Coronado Station downstream of Buchanan Dam, associated transmission line projects to reconnect them to the new station, and the rebuilding of T-109, Coronado to Lampasas, a 138-kV transmission line.

Preparer: Curtis Symank	Title: Engineering Supervisor, LCRA
Co-Sponsor: Curtis Symank	Title: Engineering Supervisor, LCRA
Co-Sponsor: Dennis Palafox	Title: Sr. Regulatory Case Manager, LCRA

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LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO POINT PEAK MOUNTAIN RESORT LLC'S SECOND REQUEST FOR INFORMATION

Question No. 2-22:

Does LCRA TSC have actual experience in constructing a 345 kV transmission line using lattice structures through crystalline rock as would be encountered on Links 15 and 16? What is the actual experience and where?

Response No. 2-22:

LCRA TSC has not constructed 345-kV transmission lines in crystalline rock. However, LCRA TSC has constructed 138-kV transmission lines utilizing lattice structures in the Hill Country, including construction in hard limestone and crystalline rocks similar to those noted. Also, please see p. 15 (line 27) through the end of p. 16 in the Direct Testimony of Curtis Symank for LCRA TSC's experience constructing these types of structures in the Hill Country.

Preparer: Curtis Symank — Title: Engineering Supervisor, LCRA
Sponsor: Curtis Symank — Title: Engineering Supervisor, LCRA

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LCRA TRANSMISSION SERVICES CORPORATION'S RESPONSE TO POINT PEAK MOUNTAIN RESORT LLC'S SECOND REQUEST FOR INFORMATION

Question No. 2-23:

In comparing a route that would utilize Links 15 (GN 10) or 16 (GN 11) versus Links 10, 14, and 17 (GN6, GN7, GN8), do you agree that the rock/soils within Links 10, 14, and 17 would be softer when compared to Links 15 and 16 thus resulting in less costs for any potential drilling to construct structures for the 345 kV transmission line? Please explain your answer specifically addressing the rock/soils that would be encountered in each link.

Response No. 2-23:

LCRA TSC would not agree with the assertion that the substrate crossed by links C10, C14, and C17 will be "softer" compared to that crossed by links C15 and C16. Information currently available to LCRA TSC without collection of soil borings along each segment indicates the potential presence of crystalline rock in this area of the project, which includes the referenced links. Please refer to LCRA TSC's response to PUC 1st RFI, Question BA 1-7.

Preparer: Curtis Symank — Title: Engineering Supervisor, LCRA
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