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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, TEXAS

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

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**RESPONSE TO LCRA'S AND STAFF'S OBJECTIONS TO DIRECT TESTIMONY OF
CHRIS JORDAN, HANK WEGHORST, AND MARGARET WILKINSON**

NOW COME Hank Weghorst, on behalf of himself and his wife Linda Weghorst, Chris Jordan, on behalf of CJ Ranch, L.L.C., and Mountain Place, Inc., and Margaret Wilkinson, on behalf of herself, all of whom are Intervenors, and file this, their response to LCRA's and Commission Staff's objections to their testimony. This response is timely filed.

I.

INTRODUCTION

LCRA's objections to each of the Intervenors' testimony focus on the following:

1. That these Intervenors are not qualified to give expert testimony about their property and the effects that the proposed transmission line will have on it;
2. That they refer to documents or statements that are hearsay;
3. That their testimony about how the line might affect the value of their property is irrelevant and inadmissible;
4. As to Mr. Weghorst and Mr. Jordan, that photographs showing the line's visual harm to their property lack a proper foundation.

Staff's objections are very similar to, if not the same as, LCRA's objections 3 and 4 above, and are as follows:

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1. That the pictures depicting the transmission line's visual and aesthetic harm to Mr. Weghorst's and Mr. Jordan's properties lack proper predicate and are inflammatory; and
2. That testimony as to the line's damage to property values is irrelevant.

Intervenors will address each of these objections, and then turn to other objections aimed solely at a single Intervenor.

II. EXPERTISE OF OWNER WITNESSES AND HEARSAY

On October 28, 2009, the day after LCRA filed its application, it sent most landowners a brochure prepared by the PUC that directed owners wishing to intervene to file a statement explaining "...how the proposed transmission line would affect your property." Attachment 6 to Application, at page 5 of 23. That is precisely what each Intervenor here has done. If any landowner testimony contravenes Rule 702, then such is permitted by the PUC, as the PUC required each intervening owner to describe how the line impacts his or her property. No expertise is required for owner to express their concerns about the line's harm and to describe it in detail. That those details include what they have learned over the years, often from others, regarding the Indian mounds (Ms. Wilkinson), sensitive habitat (Mr. Weghorst and Mr. Jordan), or the source of springs on their property (Mr. Jordan), to name but a few, does not render those details inadmissible.

The PUC directives notwithstanding, their testimony is not offered under Rule 702, but under Rule 701. That rule provides "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Any references by these Intervenors to what experts have told them, what they have read, or what they have learned through simple observation (e.g. that mature oaks and juniper together make high-quality habitat for golden-cheeked warblers and that such forested areas are replete on their property) was offered to show that their perception is not irrational but one supported by facts of which they are personally aware. The Intervenors' testimony in this regard was offered to show the concerns of these landowners and the basis for their concerns as the PUC requires of any intervenor. Accordingly, LCRA's objections should be overruled.

III. RELEVANCE OF PROPERTY DEVALUATION CAUSED BY THE TRANSMISSION LINE

It is a given that the installation of the 345 kV transmission line proposed in this proceeding will decrease property values. Intervenor agree with the PUC's position, as noted in LCRA's and Staff's objections, that the actual amount of that diminution in value to each parcel should be left to condemnation proceedings and not litigated here. They do not suggest otherwise. However, the cost for each proposed route, including ROW cost, is clearly one of the critical factors to be considered in route selection. The Intervenor's statements that their property will lose value is admissible not only because it is common knowledge, but also because it bears on the validity of the ROW costs estimated by LCRA. Because each of these Intervenor's property is unique, they should be allowed to point out the degree of loss they perceive that may be caused by the transmission line, especially where that degree may exceed the cost assumptions of the LCRA.

In the case of Margaret Wilkinson's testimony about the range of dollar loss to her property from the transmission line, LCRA also complains about her discussions with a local ranch broker about ranch sales in the area as hearsay. As noted in section II above, that testimony is offered to demonstrate that her opinions and perceptions are not irrational but based on solid research. In any event, a property owner is qualified to give an opinion of market value of her property, provided the opinion is market-based and not intrinsic value or replacement cost. *Gulf States Util. Co. v. Low*, 79 S.W.3d 561, 566 (Tex. 2002). Ms. Wilkinson's opinion satisfies *Low*. It also is relevant to the issue of ROW cost estimates. The LCRA's and Staff's objections to testimony about loss of value should be overruled.

IV. PICTURES DEPICTING THE TRANSMISSION LINE'S AESTHETIC HARM

LCRA and Staff argue that the pictures attached as exhibits to the testimony of Hank Weghorst and Chris Jordan – pictures that show how the proposed transmission lines will look if installed across their undeveloped property – lack the proper foundation. Their objections should be overruled because proper foundations were laid.

The proper foundation to admit a photograph is its identification by a witness as an accurate portrayal of the facts, and verification by that witness or a person with knowledge that the photograph is a correct representation of such facts. *Davidson v. Great Nat'l Life Ins. Co.*, 737 S.W.2d 312, 314-15 (Tex. 1987); *S.D.G. v. State*, 936 S.W.2d 371, 381 (Tex. App.-Houston [14th Dist.] 1997, pet. denied). A discrepancy raised as to the accuracy of the photograph goes to the weight of the evidence, not the admissibility. *Davidson*, 737 S.W.2d at 315. Once a foundation is laid, "photographs relevant to any issue in the case are admissible." *Castro v. Cammerino*, 186 S.W.3d 671, 681 (Tex. App. – Dallas 2006, pet. denied). If the photographs serve to illustrate disputed issues or aid the fact finder in its understanding of the case, they should be admitted. *Heddin v. Delhi Gas Pipeline Co.*, 522 S.W.2d 886, 889-90 (Tex. 1975).

Both Mr. Weghorst and Mr. Jordan testified as to where the pictures were taken on their properties, when they were taken, the views portrayed, and their knowledge of where the proposed transmission line would cross their property. Weghorst testimony, p. 5-6. Jordan testimony, p. 12-15. Mr. Weghorst then explains his personal knowledge of digital imagery, how he used LCRA's own picture of a lattice tower from the Environmental Assessment, digitized it, employed the assumptions in LCRA's EA regarding heights of the structure, estimated span lengths, and proposed right-of-way width, and then scaled the tower images appropriately to provide the "after" pictures. Weghorst, p. 5. Mr. Jordan testified to the same foundational factors, with the only difference being that he did not personally produce the digitized image of the towers but had a qualified professional do so. Jordan, pp. 14-15. That Mr. Jordan had an experienced professional prepare the "after" pictures is a distinction without a difference and does not affect their admissibility.

Mr. Weghorst's and Mr. Jordan's testimony establish that (a) they know where the transmission line is proposed to run over each of their properties, and (b) they know the dimensions of the transmission lines and lattice towers from the information LCRA provided in its EA. Armed with this knowledge and their personal knowledge regarding their property, they superimposed the transmission line according to scale and perspective. That the transmission line does not currently exist is obvious and irrelevant and no ground for exclusion of these pictures. The pictures' depiction of the transmission line's visual impact on their respective properties is accurate, illustrate disputed issues, and aids the trier of fact in understanding this case. *Heddin v. Delhi Gas Pipeline Co.*, *supra*. Any discrepancy urged by LCRA goes to the weight of the evidence, not the admissibility. *Davidson*

v. Great Nat'l Life Ins. Co., 737 S.W.2d, 312, 315 (Tex. 1987). LCRA's objection to the admission of these photographs should be overruled.

Staff also objects that these pictures are inflammatory. Relevant evidence will not be excluded simply because it would create prejudice; rather, there must be a showing that the photographic evidence would be so "unfairly prejudicial" that it "substantially outweigh(s) its relevance" *Castro*, 186 S.W.3d at 681 (citing TEX. R. EVID. 403). The mere fact that photographs may be inflammatory does not render them inadmissible. *See id.* A trial court's decision to admit or exclude relevant photograph evidence is committed to its sound discretion. *Id.* at 680-81. As noted above, these photos will aid the trier of fact in understanding the aesthetic impact of the transmission lines on Intervenor's properties. They depict what LCRA plans to build on the Intervenor's property. This evidence is not so unfairly prejudicial as to substantially outweigh its relevance. Therefore, Staff's objections should be overruled.

V.

MISCELLANEOUS OTHER LCRA OBJECTIONS SHOULD BE OVERRULED

LCRA objects to Mr. Weghorst's drawing of a line on an LCRA map and attaching the map to his testimony as Exhibit HW-12 to show how badly LCRA failed to avoid habitable structures in his small subdivision but instead appeared to have routed C16 as if to deliberately traverse the subdivision. The basis for the objection is that Mr. Weghorst lacks requisite line-routing expertise. Putting a ruler on a map and drawing a line takes no special expertise. Setting aside the obvious, Mr. Weghorst's testimony and his Exhibit HW-12 further serve to illustrate that even a layman can easily see where LCRA failed to follow the PUC guidelines of prudent avoidance and paralleling property lines where possible. The LCRA's objection should be overruled.

The LCRA also objects that Mr. Weghorst lacks the expertise necessary to provide his opinion that the choice of a preferred route that fails to follow existing rights of way contravenes "community values", as expressed by the large majority of the residents in the study area who so stated in their responses to LCRA questionnaires. This information regarding the overwhelming community support for routing along existing transmission lines was taken directly from LCRA's EA, under the section on "community values." The only expertise required to evaluate such support is the ability to read. That LCRA chooses to dismiss so clear an expression of the affected communities' values as nothing

more than a "majority vote" is not grounds for objecting to Mr. Weghorst's opinion regarding LCRA's apparent lack of interest in the communities' desires to protect their Hill Country heritage.

Finally, LCRA objects to Mr. Jordan's testimony recounting that he bought a part of his land from Dean Bibbes, a lifelong conservationist with the U.S. Department of the Interior, who commented that his family chose to sell to Mr. Jordan because they knew he would not subdivide it. LCRA argues that it is immaterial hearsay. Not so. Mr. Jordan's testimony illustrates that the concept of community values to protect the integrity of the Hill Country by keeping the family ranches here intact is not a new idea that sprung up when the LCRA announced its transmission line project. That commonly-held belief has long been an important part of the fabric of this part of Texas, and comments that underscore those values should not be dismissed as immaterial hearsay. The LCRA's objection should be overruled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2010, a copy of the foregoing was served on all parties or their attorneys of record by email, fax, or U.S. Mail.



William B. Steele III