



Control Number: 37448



Item Number: 747

Addendum StartPage: 0

**SOAH DOCKET NO. 473-10-1097**

**PUC DOCKET NO. 37448**

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

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PUC

**RESPONSE BY INTERVENOR ENCHANTED VIEW RANCH, LP TO OBJECTIONS  
TO AND MOTION TO STRIKE PREFILED TESTIMONY**

Intervenor Enchanted View Ranch LP (EVP) timely files this response to LCRA TSC objections filed on January 14, 2010 to certain portions of Robert Zajac's testimony on the basis of unqualified opinion testimony and hearsay.

**I.**

**QUALIFIED OPINION TESTIMONY**

The excerpts of the testimony objected to, and EVR's responses, are as follows:

(a) Page 5, third paragraph of answer to first question, 5<sup>th</sup> line "Construction through 12<sup>th</sup> line "region".

"Construction of a transmission line, with attendant higher costs for the steep elevation and land features unique to this segment (granite and quartz outcroppings on the hillside), also would result in destruction of trees and other vegetation that are natural habitats for wildlife, affect natural water flows, cause increased erosion and deterioration of water quality in the nearby creek watersheds, all of which would adversely impact the unique habitat found in this sub region."

In reply to the above, EVR would show the objection of “unqualified opinion testimony” is completely without merit. Clearly the above statement, in the context of the previous testimony as to ownership, characteristics of the property, elevation and steepness, nearby water flows and surrounding property, and his familiarity with the application filed by LCRA are just a few predicates to show his testimony is “rationally based on the witnesses perception” TEX. R.EVID 701. LCRA’s reliance on *McMillon*, *Green* and others is totally misplaced.

(b) Page 8, paragraph of 2d answer, 2d line “Also” through the remainder of the answer.

“Also, see the December 23, 2009 letter from the Texas Wildlife and Parks Department, Karen Clary, Ph. D. to the PUC, page 7 thereof, quoted as follows:

“Other Alternatives

Routes GN1, GN2, GN3, and GN4 - Potential Impacts to Enchanted Rock State

Natural Area, Colorado Bend State Park, and Protected Species

**Comment:** TPWD does not recommend the selection of Routes GN1, GN2, GN3 or GN4 for the following reasons. **Construction of these routes would have a permanent, adverse impact on Enchanted Rock State Natural Area.**

.....The granite batholith that makes up Enchanted Rock is a **world-renown geologic feature which provides an unobstructed 360-degree view of the Texas Hill Country from its summit.** Construction of either of these routes in such close proximity to the summit would **permanently** diminish the scenic beauty of the Enchanted Rock view shed and seriously threaten the viability of the park.” (bold and underscoring added for emphasis)

In reply to the above, EVR would show the objection of “unqualified opinion testimony” is again completely without merit. The quoted statement is from the December 23, 2009 letter from the Texas Wildlife and Parks Department, Karen Clary, Ph. D. to the PUC, which letter is a matter of public record in this proceeding. LCRA has judicially admitted and stated in this proceeding that TPWD has a “protective role over Enchanted Rock State Natural Area”, and TPWD is the “legal entity responsible for protecting the interests of the general public related to parks.” See Appeal of Order No 8. Further, the Commission in this proceeding issued a

Preliminary Order stating that the Texas Parks and Wildlife Code requires agencies with statewide jurisdiction, to provide a written response to each recommendation or informational comment by TPWD, and directs the ALJ to include written responses thereto in their proposal for decision. As of the date of this filed objection, LCRA has not filed or commented on said December 23, 2009 letter.

EVR's adoption of the statement by the TPWD does not require any further evidence of facts beyond the context of the previous testimony as to ownership, proximity to Enchanted Rock State Natural Area, characteristics of the property, elevation and surrounding property, and his familiar with the application filed by LCRA. EVR also refers to the deposition of Karen Clary taken on or about January 13, 2010 and the exhibits identified and introduced during said deposition, including the above letter. If, as and when said testimony or live testimony, including the letter of December 23, 2009 is made and offered into evidence at the hearing, then EVR adopts by reference the above quoted statement by Dr. Clary.

## **II.**

### **HEARSAY**

The excerpts of the testimony objected to as hearsay, and EVR's responses, are as follows:

Page 6, lower portion of page, beginning with "As to Texas Trails.....through page 7 end of the answer.

"As to Texas Trails, I offer the following quoted excerpts from the Texas Wildlife and Parks webpage,  
[http://www.tpwd.state.tx.us/huntwild/wild/wildlife\\_trails/](http://www.tpwd.state.tx.us/huntwild/wild/wildlife_trails/)

#### **Discover the Wildlife of Texas!**

"These driving trails will direct you to the best spots in the state to observe wildlife such as birds, butterflies, bats or pronghorns. Texas is the perfect place to view wildlife; the Lone Star State is one of the top birding destinations in the world and is rich in its diverse species of wildlife.

"Texas was the first state in the nation to create birding and wildlife viewing trails,..... These trails provide economic incentives for landowners and communities to conserve habitats while providing recreational opportunities for the traveling public. The wildlife trails of Texas promote sustainable economic development and build public support for conservation of wildlife and habitats."

"Texas is one of the nation's leaders in nature tourism."

"The wildlife trails are immensely popular because they cater to the specific needs and interests of nature tourists, providing you the information you need to explore the back roads of Texas."

"Ultimately, nature tourism leads to conservation by encouraging landowners and communities to conserve habitats, providing wildlife viewers greater opportunity, and inviting you to experience for yourself the abundant natural resources of Texas. We want more and more people to engage in the enjoyment of nature, thereby gaining greater appreciation and understanding of the importance of conserving wildlife and their habitats for present and future generations".

Also, see [http://www.tpwd.state.tx.us/huntwild/wild/wildlife\\_trails/heart/](http://www.tpwd.state.tx.us/huntwild/wild/wildlife_trails/heart/) , which identifies HOTW 086 as "Dutch Mountain Ranch" with the following:

"Steeped in Texas history, this ranch has been in the Moss family for five generations, given to Mathew Moss for his participation in the Battle of San Jacinto. The ranch offers artists, birders, hikers, photographers and nature enthusiasts beautiful scenery, abundant wildlife, spring wildflowers, and unique geology".

I offer the above quotes, as provided by the State of Texas, to reiterate the obvious: the proposed transmission line would adversely affect historical and aesthetic values, cultural resources and community values, including potential archaeological sites, recreational and park areas and the overall environmental qualities and integrity of the area. In addition, the close proximity to the Texas Trail, as designated by the State of Texas, underscores that my property is a natural habitat for wildlife and a portion of the land that could be dedicated for wildlife use would be lost or severely impacted if a transmission line were routed on my property. "

In reply to the above hearsay objection, EVR would show the objection fails to acknowledge the several hearsay exceptions TEX. R.EVID. 803 (8), (17) and (20) that apply to the quoted material, commonly categorized as reliable documents or public records as such statements are reliable and trustworthy. The rationale being is that such documents are accepted as accurate and on which reasonable people generally rely in their everyday affairs.

The quote and source of the quote is from the Texas Wildlife and Parks webpage. LCRA has judicially admitted and stated in this proceeding that TPWD has a “protective role over Enchanted Rock State Natural Area”, and TPWD is the “legal entity responsible for protecting the interests of the general public related to parks.

EVR’s testimony identified “the most noteworthy features of the surrounding community, locally known as the Oxford Valley, is the Oxford Cemetery on SH 16, just south of CR 315, and Texas Wildlife Trail, **designated by the Texas Wildlife and Parks Department as “Heart of Texas Wildlife Trail West” Site HOTW-086.** .....The Trail sign is posted at the corner of CR 113 and SH16, just across SH 16 from the Oxford Cemetery”.

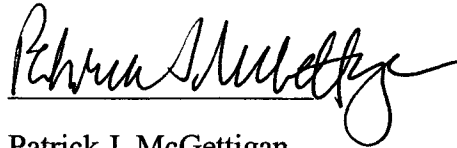
As stated above, Texas Wildlife and Parks designates and identifies HOTW 086 as “Dutch Mountain Ranch” with the following “Steeped in Texas history, this ranch has been in the Moss family for five generations, given to Mathew Moss for his participation in the Battle of San Jacinto. The ranch offers artists, birders, hikers, photographers and nature enthusiasts beautiful scenery, abundant wildlife, spring wildflowers, and unique geology”.

LCRA’s argument that this is hearsay for which there is no exception is clearly wrong. The canned rationale that Dr. Zajac must attempt “to formulate an appropriately formed opinion through investigation and rational perception” is totally misplaced. Dr. Zajac, as other citizens of the State of Texas, can surely rely and depend on the State of Texas, by and through TPWD, the agency charged with the duty and responsibility of selecting and regulating the Texas Trails, to properly publish and disseminate accurate and reliable information.

EVR, separate and apart from the above hearsay exceptions, requests that judicial notice be taken of the adjudicative facts set forth in the above quote under Rule 201 TEX. R. EVID 201 including geographic, historical and other notorious facts of common knowledge. And, to take judicial notice of Texas Parks and Wildlife Code and administrative rules and regulations pertaining to the Texas Trails.

### III.

Wherefore, premises considered, Enchanted View Ranch LP requests that the objections of the LCRA and Motion to Strike be denied, and that Enchanted View Ranch LP be granted all other relief to which it may show itself entitled.



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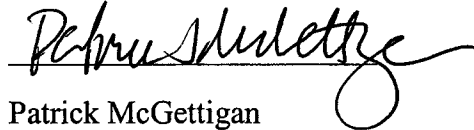
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Certificate of Service

I certify that this document will be served on January 20, 2010 filed with the P.U.C. pursuant to the Commission's procedural rules.



Patrick McGettigan