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SOAH DOCKET NO. 473-10-1097  
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APPLICATION OF LCRA TRANSMIS-  
SION SERVICES CORPORATION TO  
AMEND ITS CERTIFICATE OF CON-  
VENIENCE 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  
  
STATE OFFICE OF ADMINISTRATIVE

HEARINGS

**OBJECTION OF LCRA TRANSMISSION SERVICES CORPORATION  
AND MOTION TO STRIKE PREFILED CROSS REBUTTAL TESTIMONY  
OF CHANAS RANCH, LP WITNESS RICHARD T. MCMILLAN**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Objection to Prefiled Testimony and Motion to Strike ("Motion to Strike") the testimony of Intervenor Chanas Ranch, LP Witness Richard T. McMillan, and would respectfully show as follows:

**I. Background**

Intervenor Chanas Ranch, LP filed the Cross Rebuttal Testimony of Richard T. McMillan on January 22, 2010 in this docket. Objections were required to be filed per Order No. 4 on January 27, 2010; therefore, this objection was timely filed. In addition to the grounds set forth in LCRA TSC's separately filed Objections and Motion to Strike "Cross Rebuttal" and Rebuttal Testimony of Intervenor, regarding the proper scope of intervenor cross rebuttal, LCRA TSC objects to certain portions of Richard T. McMillan's testimony on the following bases.

**II. Motion to Strike**

**A. 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

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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 excerpt should be considered inadmissible hearsay:

Page 4, line 11 (beginning with "I am aware") through line 13 (ending with "property.").

Page 4, line 15 ("as it would be to my neighbors.").

This testimony regarding other intervenors' positions regarding routing of this transmission line project or effects of particular links is not admissible through Mr. McMillan. Such reliance on statements of third parties is an attempt to use out of court statements to prove the truth of matters asserted. No exception to the hearsay rule applies.

### **III. Conclusion and Request for Relief**


WHEREFORE, PREMISES CONSIDERED, LCRA TSC respectfully requests that the identified testimony of Richard T. McMillan be stricken. LCRA TSC also requests all other relief to which it may show itself entitled.

Respectfully submitted,

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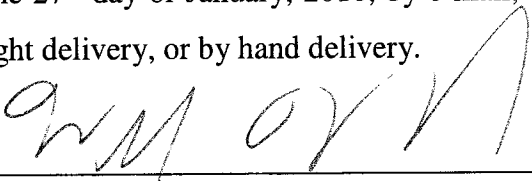
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ATTORNEYS FOR LCRA TRANSMISSION  
SERVICES CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on this the 27<sup>th</sup> day of January, 2010, by e-mail, facsimile, first-class, U.S. mail, postage prepaid, overnight delivery, or by hand delivery.

  
William T. Medaille