



Control Number: 37448



Item Number: 891

Addendum StartPage: 0

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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARING

RECEIVED
10 JAN 27 2011
PUBLIC UTILITIES COMMISSION
FILING CLERK

POINT PEAK MOUNTAIN RESORT LLC'S,
BARBARA R. BARRON'S, AND ALLEN R. PAKSIMA'S OBJECTIONS AND MOTION
TO STRIKE LANDOWNERS' PRESERVATION GROUP'S CROSS REBUTTAL
TESTIMONY OF WILLIAM J. MADDUX AND ROGER MICHAEL RANNEFELD

NOW COMES Point Peak Mountain Resort LLC, Barbara R. Barron, and Allen R. Paksima (hereafter referred to as "Point Peak") and files this, their Objection and Motion to Strike Landowners' Preservation Group's cross rebuttal testimony of William J. Maddux and Roger Michael Rannefeld. This response is timely filed and Point Peak would respectfully show as follows:

I. Background

On January 22, 2010 a group of intervenors calling themselves Landowners' Preservation Group ("LPG") filed their purported cross rebuttal to Barbara R. Barron's (and Robert Payne's) direct written testimony. LRG's cross rebuttal to Ms. Barron's direct written testimony consists of purported cross rebuttal written testimony of William J. Maddux and Roger Michael Rannefeld.

II. Motion to Strike

The purported "cross rebuttal" of Messrs. Rannefeld and Maddux is not cross rebuttal at all. It does not rebut the direct testimony it purports to rebut. On the contrary, it is an attempt to untimely file direct testimony from individuals who are not intervenors in this

proceeding and are not landowners along any proposed route. Therefore, it does not constitute proper timely cross rebuttal testimony and should be stricken.

In addition, even if it were proper rebuttal testimony (which it is not) the majority of the testimony is not based upon personal knowledge, relies upon hearsay, and thus is not admissible. Tex. R. Evid. 602, 802. In short, Landowners not on C14 or C 17 (the landowners calling themselves the "Landowners' Preservation Group") but whose land is on routes that could be utilized if C14 and C17 are utilized are improperly and untimely attempting to use Messrs Rannefeld and Rannefeld as proxies for the landowners along C14 and C17 because the landowners along C14 and C17 have not shown opposition to C14 and C17.

A. Testimony of Roger Michael Rannefeld

Roger Michael Rannefeld's purported cross rebuttal was filed as Item #778 in this Docket. Mr. Rannefeld admits that he is not an intervenor. See Item #778 Page 5, lines 7-8. He testifies that the purpose of his testimony is to "rebut the [direct] testimony of certain intervenor witnesses [intervenor Barbara Rae Barron and intervenor Robert Payne] who discuss the Buchanan Dam community that would be affected by proposed segments C14 and C17". See Item #778 Page 6, lines 19-21. More specifically Mr. Rannefeld testifies that:

Mrs. Barron and Mr. Payne support their recommendation by downplaying the impact of a 345-kV transmission line on the Buchanan Dam community or by alleging the members of the community are indifferent to the routing of the transmission line along C14 and C17, through Buchanan Dam. As a member of the Buchanan Dam Chamber of Commerce, a business owner and long-time resident, I am qualified to speak to the values of the community and the impact that a 345-kV transmission line would have on the businesses and economic development of the area.

See Item #778 page 7, lines 16-23.

However, Ms. Barron's direct testimony is not inclusive of any of these issues. In Ms. Barron's direct testimony filed as #575 in this Docket, the purpose of her testimony is:

- 1) Voice my opposition to the preferred route, GN11, selected by the LCRA Transmission Services Corporation ("LCRA TSC") in Docket No. 37448;
- 2) Provide background information about our property affected by the proposed transmission line;

- 3) *Discuss some of the geologic and rock features that could be encountered along the placement of the proposed transmission lines specifically in and around the areas of segments C14 and C17; and*
- 4) *Address the incorrect numbers of habitable structures along segments C14 and C17 and the quality and type of structures identified by LCRA TSC as habitable.*

See Item #575 Barron Direct Testimony at Page 4, lines 18 to Page 5, lines 5.

Mr. Rannefeld's testimony thus does not properly rebut direct testimony by Ms. Barron. Mr. Rannefeld's testimony discusses new issues and discusses these new issues beyond the date to submit direct testimony. See Order No. 4. As such, his testimony is an improper attempt to untimely file direct testimony by a non-intervenor. The testimony should thus be stricken.

Should Mr. Rannefeld's testimony be considered, much of it should be stricken or afforded little weight.

Mr. Rannefeld's testimony appears to be an improper attempt to utilize a lay witness to present purportedly expert testimony. The testimony is thus inadmissible. *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); Tex. R. Evid. 702. The testimony is further inadmissible because it is based upon hearsay and thus not rationally based on the perception of the lay witness. Tex. R. Evid. 701.¹

Specifically, LPG attempts to, in effect, untimely designate Mr. Rannefeld as an expert witness on the "value of the community" and "the impact that a 345-kV transmission line would have on the businesses and economic development of the area" and the differences between electromagnetic radiation between a 69kV transmission line and the proposed new 345kV transmission line. See Item #778 Page 7, lines 20-23; page 15 line 17 – p. 16 line 23 filed on January 26, 2010.

Interestingly, such purportedly expert testimony does not rebut any expert testimony by Ms. Barron. Even if it did, it would be an untimely submittal of expert testimony. LPG failed to timely identify Mr. Rannefeld as a expert. In fact, LPG has not identified Mr. Rannefeld as a

¹ It also is not helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. Tex. R. Evid. 701.

witness. LPG appears to be relying upon another party's belated identification of Mr. Rannefeld. *See* Item # 867 LPG Responses to LCRA TSC's First Request for Information filed on January 26, 2010 at 1-5 referring to "William R. Hinkckley's [sic] Response to LCRA TSC's RFI 2-5". William R. Hinckley's Response to LCRA TSC's Requests for Information was also filed on January 26, 2010. At response to RFI 2-5, Hinckley identifies Mr. Rannefeld as a "non-expert witness". *See* Item #865 at Response to LCRA TSC RFI 2-5.

Furthermore, Mr. Rannefeld's expert qualifications are represented to be a "member of the Buchanan Dam Chamber of Commerce, a business owner and a long-time resident". This is insufficient to establish qualifications to tender such opinions. *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); Tex. R. Evid. 702.

Mr. Rannefeld testifies that he owns "several businesses in the Buchanan Dam community that would be impacted [sic] the proposed transmission line if one or more routes is selected". *See* Item #778 Page 5, lines 8-10. However, he only identifies two businesses which he owns. American Self Storage at 16211 East Highway 29 and 11 Coronado Street and Hill Country Hall at 15675 East Highway 29. He does not identify any of these businesses as being on or within 500 feet of a proposed route. As such, it has already been determined that these businesses are not relevant to these proceedings. Furthermore, he has presented no credible evidence how they would be adversely impacted.²

Mr. Rannefeld also relies upon a very significant amount of hearsay. In support of his opinions he attaches "a letter from business owners in the Buchanan Dam area who will be impacted by the new transmission line". *See* Item #778 Page 8, lines 14-19. The letter he

² Mr. Rannefeld fails to testify how these businesses could be effected by the transmission lines. American Self Storage is a self storage facility. It is hard to imagine how business at a self storage facility not on any proposed route would be effected by the transmission lines. Similarly, Hill Country Hall's web site reflects that it is a 5600 square foot metal building that has been used to sell seasonal fireworks and to host parties. *See* www.hillcountryshall.com. The web site provides a link to "a full list of scheduled events". However, there were no events scheduled when the site was visited on January 26, 2010. In addition, fireworks may only be legally sold for 23 days each year from this location (or virtually everywhere else in Texas) ("beginning June 24 and ending at midnight on July 4 [11 days]... [and] beginning December 20 and ending at midnight on January 1 of the following year [12 days]"). Tex. Occ. Code § 2154.202. It is hard to imagine how such a business that is not on any proposed route would be effected by the transmission lines.

attaches is actually a document with date January 20, 2010 that purports to be a letter to "the Members of the Texas Public Utilities Commission" written by Bryan and Gwen Carpenter regarding their "new resort" located at 427 Ellison. This document is inadmissible hearsay. Further, the Carpenter's are not intervenors in this proceeding. There is no evidence that their property is on a proposed route or within 500 feet of a proposed route. They have filed no direct testimony. The opinions in the letter are unsupported, unreliable, and an improper attempt to avoid cross examination. The letter further makes wholly unsupported speculative projections such as that "the number of families that visit us could decrease by 50% or more the first year".

Mr. Rannefeld attempts to attack Ms. Barron's personal knowledge regarding the habitable structures on segments C14 and C17. Mr. Rannefeld testifies that it is his opinion that "Ms. Barron incorrectly concludes many of these building and dwellings are not habitable structures". *See* Item #778 Page 8, lines 3-6. In support of this proposition, he largely proposes a different definition of the term "habitable structure". The only specific initial challenges to Ms. Barron's testimony involve portable campers identified by Ms. Barron. *See* Item #778 Page 8, lines 5-19. It appears that the gravamen of Mr. Rannefeld's initial challenge is that campers should be counted as "habitable structures" and should be given the same weight as a non-mobile structure. That is purely a legal determination that will be made by the ALJ. Interestingly, Mr. Rannefeld admits his lack of personal knowledge of the campers by stating that he is "not familiar with the other two campers identified by Ms. Barron". His second challenge regards 3 structures identified as Ms. Barron as being vacant. Interestingly, he actually confirms Ms. Barron's testimony. *See* Item #778 Page 12, line 14- page 13 line 12. (e.g. "The Ranch" "is currently not being occupied", Habitable Structure 91 is "temporarily unoccupied", Habitable Structure 148 "is simply not in use at the moment.. is for sale, and has a dilapidated cabin on it"). Mr. Rannefeld admits that he has no personal knowledge concerning 5 additional properties mentioned by Ms. Barron. *See* Item #778 Page 13, line 13-16. Finally, Mr. Rannefeld merely

challenges Ms. Barron's characterization of LCRA's Habitable Structures 115, 141, 142, and 143. Her characterization is supported by her photo attached to her direct testimony.

Interestingly, Mr. Rannefeld then attacks Ms. Barron's direct testimony regarding the fact that the structures along C14 and C 17 were constructed after the construction of the existing transmission lines (which fact has been confirmed by LCRA). However, he then admits that he has no personal knowledge regarding same. *See* Item #778 Page 14, line 22-page 15 line 1. ("...I am not sure which of the habitable structures were built before or after existing transmission lines..."). Finally, Mr. Rannefeld relies upon hearsay and attaches 4 photos and 3 maps (several altered) for his proposition that LCRA's proposed lattice towers near 3 specific properties (Danny's County Diner, Genesis Lutheran Church, and a mobile home park on LNB Drive), would be more intrusive to the owners of those properties (who are not him, have not intervened, and have not filed direct testimony) than the existing LCRA "H" framed structures. *See* Item #778 Page 14, line 22-page 17 line 23. ("From what I can tell", "While I cannot speak to the health issues", "I can say that the people in the Buchanan Dam community", "50 men, women and children who would need to vacate the property...", "the real estate development of the area would come to a halt").

Interestingly, Mr. Rannefeld attacks Ms. Barron regarding the reference in her testimony to the "lack of million dollar homes". *See* Item #778 Page 18, line 1-line 16. Ms. Barron's testimony regarding same is as follows: "The misconception that there are million dollar homes along links C14 and C17 that should be avoided because of investment...". *See* Ms. Barron testimony at Section VII Conclusions at p. 23 lines 20-21. What he doesn't mention is that the reference actually refers to PUC's position at the technical conference that Ms. Barron's property should be taken in order that "million dollar homes" along C-14 and C-17 could be avoided. Ms. Barron merely pointed out that this was a red herring because there are no such million dollar homes.

Finally, perhaps most telling of Mr. Rannefeld's testimony is his admission in his attack on Mr. Payne's testimony that only two affected landowners on C14 and one affected landowner on C17 filed either a protest letter or intervention. *See* Item #778 Page 18 line 19 – page 19 line 4. Lack of owners' opposition to C14 and C17 is certainly relevant. This is especially so when landowners not on C14 or C 17 (the landowners calling themselves the "Landowners' Preservation Group") are improperly attempting to use Mr. Rannefeld as a proxy for the landowners along C14 and C17.

B. Testimony of William J. Maddux

LPG files the purported cross rebuttal testimony of William J. Maddux ("Mr. Maddux"), Item #777 in this Docket. Mr. Maddux testifies that he offices at 13200 Bee Cave Parkway, Austin, Texas 78738. *See* Item #777 Page 3, line 2-4. Mr. Maddux apparently lives in Austin. Mr. Maddux is not an intervenor. Mr. Maddux testifies that he is an "owner" of property "near Buchanan Dam" along C-17. *See* Item #777 Page 4, lines 4-10. However, his testimony reflects that he is not actually the owner but merely a "manager" for Angel Land, LLC which is "the general partner" for the Driftwood Land Company Ltd. which he testifies owns tract C17-088. *Id.* Interestingly, Driftwood Land Company Ltd. has not intervened. He testifies that the purpose of his testimony is to "rebut several assertions and impressions given by the [direct] testimony of [intervenor] Barbara Barron and [intervenor] Robert Payne". *See* Item #777 Page 6, lines 2-4. More specifically Mr. Maddux was asked:

Q.: Both Payne and Barron point out that there are many habitable structures that are near an existing 69kV line and that for those landowners having the 345kV line within 500 feet of centerline means that they are not newly affected. Do you agree with that?

See Item #777 page 6, lines 10-11.

First of all, the question is objectionable because it is leading, misrepresents the testimony, and purports to present facts not in evidence.

Ms. Barron's direct testimony is not inclusive of any of these issues. Ms. Barron testified that the purpose of her testimony is:

- 1) *Voice my opposition to the preferred route, GN11, selected by the LCRA Transmission Services Corporation ("LCRA TSC") in Docket No. 37448;*
- 2) *Provide background information about our property affected by the proposed transmission line;*
- 3) *Discuss some of the geologic and rock features that could be encountered along the placement of the proposed transmission lines specifically in and around the areas of segments C14 and C17; and*
- 4) *Address the incorrect numbers of habitable structures along segments C14 and C17 and the quality and type of structures identified by LCRA TSC as habitable.*

See Item #575 Barron Direct Testimony at Page 4, lines 18 to Page 5, lines 5. In

response to this improper question, Mr. Maddux testifies as follows:

This contention by Payne and Barron is absolutely false and it stems from the fact that they have not compared the impact of a 345kV line with a Wood H-Frame 69 kV line and a 345 kV line with lattice steel towers. There is no comparison between the structures and the visual impact for the two types of lines.

See Item #777 page 6, lines 10-11.

Mr. Maddux's testimony does not properly rebut direct testimony by Ms. Barron. Mr. Maddux's testimony discusses new issues and discusses these new issues beyond the date to submit direct testimony. See Order No. 4. As such, his testimony is an improper attempt to untimely file direct testimony by a non-intervenor. The testimony should thus be stricken.

Should Mr. Maddux's testimony be considered, much of it should be stricken or afforded little weight.

Mr. Maddux's testimony appears to be an improper attempt to utilize a lay witness to present purportedly expert testimony. The testimony is thus inadmissible. *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); Tex. R. Evid. 702. The testimony is

further inadmissible because it is based upon hearsay and thus not rationally based on the perception of the lay witness. Tex. R. Evid. 701.³

Interestingly, despite his purported knowledge of the area, Mr. Maddux does not attack Ms. Barron's personal knowledge regarding the habitable structures on segments C14 and C17. Mr. Maddux also does not attack Ms. Barron's direct testimony regarding the fact that the structures along C14 and C 17 were constructed after the construction of the existing transmission lines (which fact has been confirmed by LCRA). Instead, LPG attempts to, in effect, untimely designate Mr. Maddux as an expert witness on the differences between the existing 69kV transmission line H-Frame structures and the proposed new 345kV transmission line steel lattice structures. His opinion is that the:

"H-Frame 69kV line structures with their dark brown color, like the ones in the Buchanan Dam area, tend to blend in with surroundings but the 345 kV steel lattice structures stick out like a sort thumb. In my line of work I come in contact with dozens of buyers and I believe they are of a similar opinion."

See Item #777 page 6, lines 16-23.

Interestingly, such purportedly expert testimony does not rebut any expert testimony by Ms. Barron. Even if it did, it would be an untimely submittal of expert testimony. LPG failed to timely identify Mr. Maddux as a expert. LPG has not identified Mr. Maddux as a witness. LPG appears to be relying upon another party's belated designation of Mr. Maddux. See Item # 867 LPG Responses to LCRA TSC's First Request for Information filed on January 26, 2010 at 1-5 referring to "William R. Hinkckley's [sic] Response to LCRA TSC's RFI 2-5". William R. Hinckley's Response to LCRA TSC's Requests for Information was also filed on January 26, 2010. At response to RFI 2-5, Hinckley refers to the "cross rebuttal testimony of William J. Maddux" and attached Mr. Maddux's resume which identifies him as "Self Employed-Real Estate Broker and Land Developer". See Item #865 at Response to LCRA TSC RFI 2-5.

³ It also is not helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. Tex. R. Evid. 701.

Furthermore, Mr. Maddux's stated expert qualifications are as a real estate broker and having "assisted in the development of over 12,000 acres of land in and around the Highland Lakes area" in the past 20 years. This is insufficient to establish qualifications to tender expert opinions on transmission structures, much less lattice transmission structures which he claims are not currently in the area. *E.I. DuPont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); Tex. R. Evid. 702.

Mr. Maddux also relies upon improper evidence. In support of his opinions he attaches a picture labeled Attachment WJM-3 upon which he has "superimposed the lattice steel towers for demonstrative purposes...We tried to make is as close as to scale as we could". See Item #777 Page 4 line 17 – p. 5 line 1. He attaches a similarly altered photo as Attachment WJM-5. See Item #777 Page 8 line 1 - 14.

Finally, Mr. Maddux relies upon hearsay to support his testimony. He testifies that he "believe[s] [buyers] are of a similar opinion". See Item # 177 page 6, lines 16-23 (emphasis added). Similarly he claims that "many purchasers of residential lots are afraid to be anywhere near a 345 kV line". See Item #777 Page 8 line 1 - 14. However, he identifies no such purchasers.

Interestingly, Mr. Maddux is asked:

Q.: Ms. Barron makes the comment that there is a misconception that there are million dollar homes along links C14 and C17. Are you aware of anyone making the claim that the homes along C14 and C17 are million dollar homes?

See Item #777 Page 9 line 4-15.

First of all, the question is objectionable because it is leading, misrepresents the testimony, and purports to present facts not in evidence.

Ms. Barron's testimony regarding same is as follows: "The misconception that there are million dollar homes along links C14 and C17 that should be avoided because of investment...". See Ms. Barron testimony at Section VII Conclusions at p. 23 lines 20-21.

Mr. Maddux responds to the question as follows:

A.: No, I am not. It seems to me that the comment as made to underscore the fact that many of the residents of the Buchanan Dam Community live in houses associated with wage earners of modest means. Contrary to the impression left by Ms. Barron, the Buchanan Dam Community has a diversity of housing stock, including some housing for individuals with substantial incomes...

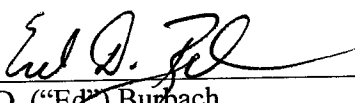
See Item #777 Page 9 line 08-15.

What he doesn't mention is that the reference actually refers to PUC's position at the technical conference that Ms. Barron's property should be taken in order that "million dollar homes" along C-14 and C-17 could be avoided. Ms. Barron merely pointed out that this was a red herring because there are no such million dollar homes.

III. Conclusion and Request for Relief


WHEREFORE, PREMISES CONSIDERED, Point Peak respectfully requests that the identified testimony of Mr. Rannefeld and Mr. Maddox be stricken. Point Peak also requests all other relief to which it may show itself entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the propounding party on the 27nd of January, 2010 by electronic transmission, facsimile, First-Class U.S. mail, or by hand delivery.



Edward D. ("Ed") Burbach

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