



Control Number: 37463



Item Number: 319

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**SOAH DOCKET NO. 473-10-0709
PUC DOCKET NO. 37463**

**APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY,
LLC TO AMEND ITS CERTIFICATE
OF CONVENIENCE AND
NECESSITY FOR THE NEWTON -
KILLEEN 345-KV CREZ
TRANSMISSION LINE IN BELL,
BURNET AND LAMPASAS
COUNTIES**

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**BEFORE THE
STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

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**SAVE THE LAMPASAS RIVER, INC. MOTION FOR CLASSIFICATION AND
ALTERNATIVE OBJECTIONS AND MOTION TO STRIKE**

Pursuant to Order No. 3, Objections to Intervenor Testimony are due on December 15, 2009. Therefore, this pleading is timely filed. On December 11, 2009 the "MMM" intervenors filed certain documents with the Public Utility Commission of Texas ("Commission"). The cover pleading to those documents is titled "Statements of Position and Written Testimony of "MMM" Intervenor."

I. Motion for Classification

Although the cover pleading characterizes the submittal made by the "MMM" Intervenor as both written testimony and position statements, there appears to be no basis for distinction between which documents are intended to be testimony and which are intended to be position statements.

Given the general format of the documents as letters written to the Public Utility Commission of Texas and the informal nature of the submittal from parties represented

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by counsel, it appears that the entirety of the submittal is best characterized as position statements. As required by the Commission's rules, and as was made clear in Order No. 4, any testimony must conform with Texas Rules of Evidence 602, 701, and 702. The information submitted does not appear to conform to those rules, and is therefore properly considered as position statements.

TEX. R. EVID. 602 requires that the evidence support a finding that the witness has personal knowledge of the facts in the testimony. The submittals offered by counsel on behalf of the "MMM" intervenors make no apparent attempt to satisfy this evidentiary requirement.

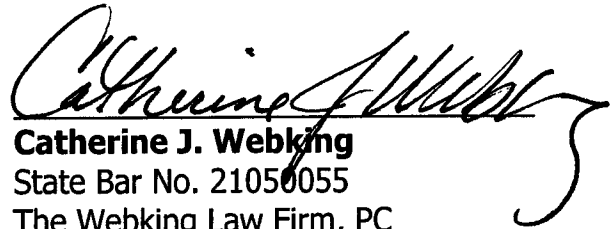
In fact, many of the submittals are identified as coming from at least 2 individuals, so no specific witness is identified for the information contained in the letters. For example, many of the documents are represented as coming from apparent husbands and wives. There is no indication whether the information contained in these letters is within the personal knowledge of the husband or wife. If this were to be considered testimony, there is no basis for determining which of these individuals identified on the documents possesses the requisite personal knowledge to sponsor the documents. Nor is it clear which, if any, of these individuals would be available for cross-examination at the hearing.

There are also multiple instances in which the landowner letters submitted reference an expected impact to the value of their property. As is made clear in the preliminary order in this case, the compensation due to a landowner for lost property value is not properly considered in this docket. Therefore, these statements should be

stricken if the statements are determined to be testimony. However, if the statements are classified as Position Statements, this issue need not be addressed.

WHEREFORE, PREMISES CONSIDERED, STLR files this motion and requests that the administrative law judges classify the documents submitted by "MMM" Intervenors as position statements.

Respectfully submitted,

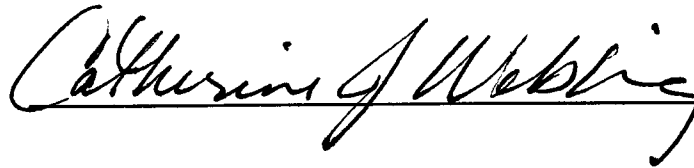
A handwritten signature in black ink, appearing to read "Catherine J. Webking", with a long, sweeping flourish extending to the right.

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**ATTORNEY FOR SAVE THE LAMPASAS
RIVER, INC.**

CERTIFICATE OF SERVICE

I certify that a copy of the above has been sent via electronic mail, facsimile, or first class mail to all parties of record in this proceeding consistent with the service procedures adopted in this docket, on this the 15th day of December, 2009.

A handwritten signature in black ink, reading "Catherine J. Webber". The signature is written in a cursive style with a horizontal line underneath the name.