



Control Number: 37778



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**SOAH DOCKET NO. 473-10-2461  
PUC DOCKET NO. 37778**

<b>APPLICATION OF LCRA TRANSMISSION SERVICES CORPORATION TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE TWIN BUTTES TO MCCAMEY D 345-KV CREZ TRANSMISSION LINE IN TOM GREEN, IRION, AND SCHLEICHER COUNTIES, TEXAS</b>	§ § § § § § § § §	<b>BEFORE THE STATE OFFICE          OF          ADMINISTRATIVE HEARINGS</b>
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**RESPONSE TO INTERVENORS MAYFIELDS', MCGREGOR RANCH'S AND  
ANDREW L. ALLEN'S JOINT MOTION TO PROHIBIT DISCLOSURE OF  
CONFIDENTIAL AND HIGHLY SENSITIVE DOCUMENTS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE LILO D. POMERLEAU:

Intervenor, David E. Steen Estate ("Respondent"), urges the Administrative Law Judge to deny the Joint Motion of Intervenor Mayfields, McGregor Ranch, and Andrew L. Allen ("McGregor Ranch et al.") filed on March 17, 2010, and in support shows as follows:

McGregor Ranch et al. have requested that the ALJ Prohibit the disclosure of the contracts between McGregor Ranch et al. and any wind company. In support of this Motion, McGregor Ranch et al. argues that 1) the contracts are confidential and 2) all but certain redacted portions of the contract, upon which McGregor Ranch et al. rely upon to support their arguments regarding routing, are outside the scope of discovery because they are irrelevant to routing issues. Respondent has served McGregor Ranch et al. with RFIs expressly requesting copies of their contracts with wind companies.

**A. Confidentiality**

In support of their objection to producing copies of the contracts, McGregor Ranch et al. have produced a clause of the contract stating that the contract is confidential. This clause states that a copy of the contract or its provisions shall not be produced to "any unauthorized person."

The clause produced by McGregor et al. expressly authorizes the Landowner to provide a copy to its “family, attorney, accountant, financial advisor, and any existing or prospective mortgage, lessee, or purchaser, so long as they likewise agree not to provide copies of this Agreement...to any unauthorized person...” The clause itself indicates that limited disclosure is permitted under certain circumstances including to their attorneys and prospective purchasers.

Furthermore, Respondent objects to the designation of the contracts as protected or “highly sensitive” documents in that McGregor Ranch et al. have waived their objection of confidentiality by disclosing confidential clauses of the contracts which they claim support their arguments against placing the transmission lines on their property. They have produced a redacted contract containing only the non-obstruction easement clause, which they contend prohibits them from allowing LCRA to construct a transmission line on their property. However, they insist the rest of the contract is “confidential.” If they are going to use and provide copies of certain “confidential” portions of the contract to support their position, they cannot deny the other parties the ability to review the rest of the contract, which may contain provisions not in support of their position. They cannot choose to make portions of the contract which support their position “not confidential” while the rest is “confidential.” Permitting McGregor Ranch et al. to use redacted portions of the “confidential” contract to bolster their position, while denying Respondent the right to fully evaluate and put into evidence the entire contract, wrongly permits McGregor Ranch et al. to use confidentiality as a sword, rather than a shield. See *Republic Ins. Co. v. Davis*, 856 SW2d 158, 163 (Tex. 1993) (offensive use of a privilege or confidential information waives the privilege).

B. Relevance

McGregor Ranch et al. also argue that, while the non-obstruction clause is relevant, because it supports their argument, the rest of the contract is irrelevant to the routing positions of the other parties. In fact, Respondent's stated position in response to RFIs and in their Direct Testimony is that the transmission *should* be built on land which has already been burdened with wind turbines. Therefore, the issue of whether a transmission line *can be* built on that land under the terms of the landowners' contracts with wind companies is highly relevant to the arguments raised by Respondent.

Respondent cannot fully address McGregor Ranch et al.'s argument without having and being able to put into evidence complete copies of the contracts. Therefore, the contracts are calculated to lead to the admission of relevant evidence, and are within the scope of discovery. McGregor Ranch et al.'s own use of the contract provisions as evidence establishes the contracts' relevance beyond a doubt.

In conclusion, Respondent requests the ALJ to deny the Motion of McGregor Ranch et al. to prohibit disclosure of their contracts with wind companies to other parties and to allow such disclosure.

Respectfully submitted,

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By: \_\_\_\_\_

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OF THE ESTATE OF DAVID E. STEEN

CERTIFICATE OF SERVICE

This is to certify that on this 22nd day of March 2010, a true and correct copy of the foregoing was served to the parties via service-by-email or U.S. Mail.

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Joanne Summerhays