



Control Number: 38230



Item Number: 1226

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SOAH DOCKET NO. 473-10-4398

PUC DOCKET NO. 38206

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APPLICATION OF LONE STAR TRANSMISSION, LLC FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE CENTRAL
A TO CENTRAL C TO SAM SWITCH/
NAVARRO PROPOSED CREZ
TRANSMISSION LINE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**YELLOWBIRD RANCH'S RESPONSE TO
LONE STAR TRANSMISSION, LLC'S
MOTION TO STRIKE DIRECT TESTIMONY OF W. PLACK CARR, III**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW Yellowbird Ranch and files this Response to Lone Star Transmission, LLC's ("Lone Star") Motion to Strike Direct Testimony of W. Plack Carr, III.

Order No. 5 in this docket provides that August 26, 2010 is the deadline for filing responses to motions to strike direct testimony. Accordingly, this response to Lone Star's Objections is timely filed.

I. Response to Lone Star's Objections

Lone Star's relevance and hearsay objections to the following testimony of Mr. W. Plack Carr, III should be overruled.

p. 4, ll. 25-29: Additionally, when one of these lines crosses private property, there is no consideration given to diminution of the market value of the land but rather only a "taking by condemnation" and payment to a landowner for consideration of such taking. Mr. Mewhinney, who is filing testimony on our behalf, has convinced me that by placement of this transmission line bisecting our ranch, the ranch's value could be cut in half.

P.U.C. Subst. R. 25.101(b)(3)(B) expressly provides that, ". . .the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners. . . .".

See also the Commission's Order of Referral.¹ Mr. Carr's testimony is a legitimate and relevant statement regarding the line's impact to Mr. Carr's property as perceived by him. It is not offered to prove future property use or condemnation value. Mr. Carr's testimony expressly addresses the issue, set out in Rule 25.101, of moderation of impact on him as an affected landowner. Furthermore, the last sentence of the testimony should not be stricken as hearsay because it is offered as Mr. Carr's perception and belief as evidenced by the statement, "Mr. Mewhinney. . .has convinced me. . . ." A lay witness' opinion is admissible if it is rationally based on the perception of the witness and helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. *See* TEX. R. EVID. 701. *See also Sierad v. Barnett*, 164 S.W.3d 471, 483-84 (Tex. App.—Dallas 2005, no pet.), "Lay witnesses can give opinions on damages as long as they testify about matters within their knowledge. A lay witness can testify about value if he has personal knowledge of facts forming the opinion, a rational connection exists between the facts and opinion and the opinion is helpful." Surely, if a witness can testify about damages he can testify regarding his perception regarding diminution of value of his own property.

Finally, Mr. Mewhinney has filed expert testimony on Yellowbird's behalf, and may be cross-examined by Lone Star regarding the reliability and basis for the statements that have caused Mr. Carr to form his stated belief. No one objected to Mr. Mewhinney's testimony.

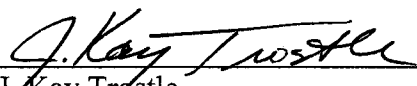
¹ Docket No. 38140, Order of Referral at p. 4, including among the issues to be addressed, "Which proposed transmission line route is the best alternative, weighting the factors set forth in...P.U.C. Subst. R. 25.101(b)(3)(B)," (May 26, 2010).

II. Conclusion and Prayer

WHEREFORE, PREMISES CONSIDERED, Yellowbird Ranch respectfully requests that the presiding judges overrule the objections and motion to strike of Lone Star and grant such other and further relief to which Yellowbird may show itself entitled.

Respectfully submitted,

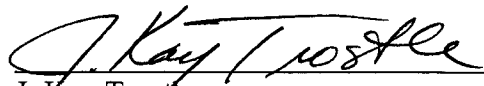
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ATTORNEYS FOR YELLOWBIRD RANCH

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August 2010, a true and correct copy of the foregoing document is being served via facsimile, U.S. mail or electronic mail (email) to all parties of record.


J. Kay Trostle