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**SOAH DOCKET NO. 473-10-4398
PUC DOCKET NO. 38230**

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	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**COMMISSION STAFF'S RESPONSE TO CHIMNEY CREEK LAND
COMPANY, LLC'S OBJECTIONS TO DIRECT TESTIMONY OF
MOHAMMED ALLY, P.E.**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Chimney Creek Land Company, LLC's (CCLC's) Objections to the Direct Testimony of Mohammed Ally, P.E. (Objections) and would show the following:

**I. STAFF'S ROLE IN CERTIFICATE OF CONVENIENCE AND
NECESSITY (CCN) CASES**

Staff's role in cases involving an application for a certificate of convenience and necessity (CCN) is to review the application for compliance with the Public Utility Regulatory Act (PURA), the Commission's rules, and Commission precedent, and to make an objective routing recommendation in the context of the factors set forth in PURA and the Commission's rules. Staff is unique in that it represents the public interest rather than an individual with a specific property interest. In every contested CCN case, Staff files direct testimony presenting its routing recommendation and the underlying analysis. CCN applications, by their nature, involve many factual issues, some of which require specialized knowledge and experience to analyze in the context of PURA and the Commission's rules. P.U.C. PROC. R. 22.221(a) states that the Texas Rules of Civil Evidence (TRE) shall be followed in contested cases. TRE 702 governs the admissibility of expert testimony. TRE 702 does not restrict expert testimony to

experts with specific formal training, but rather allows a person to testify as an expert witness so long as: (1) the person is qualified by knowledge, skill, experience, training, or education; (2) the proposed testimony provides scientific, technical, or other specialized knowledge; and (3) the testimony will assist the trier of fact to determine a fact in issue.¹ Finally, an agency's rulings in admitting expert testimony are within its broad discretion and will not be disturbed on appeal.²

II. CCLC'S OBJECTIONS ON THE BASIS OF STAFF WITNESS QUALIFICATIONS

CCLC objects to the direct testimony of Staff's witness, Mohammed Ally, asserting that Mr. Ally fails to demonstrate any qualifications to give an opinion that Route AC1 is the most preferable alternative route when considering the routing factors of PURA § 37.056(c)(4) and P.U.C. SUBST. R. 25.101(b)(3)(B), particularly the factor of environmental integrity.³ Accordingly, CCLC moves to strike certain portions of Mr. Ally's testimony.⁴

TRE 702 provides that the admission of expert testimony is allowed if the witness is qualified as an expert by "knowledge, skill, experience, training, *or* education."⁵ PURA § 37.056(c)(4)(D) requires that environmental integrity be considered as a routing factor in CCN applications, and accordingly, the proposed routes' environmental impact must be addressed in contested CCN cases. Staff submits that Mr. Ally is qualified by knowledge, skill, experience, training, *and* education to provide his opinion as to factors addressed in CCN cases, including that of environmental integrity.

Since receiving his Bachelor of Science and Master of Science degrees in Mechanical Engineering from the University of Texas, Mr. Ally has had extensive engineering experience.⁶ He has been employed at the Commission since March 2002.⁷ As an Electric Utility Engineering Specialist in the Commission's Infrastructure and Reliability Division (I&R Division), Mr. Ally's job responsibilities include reviewing CCN applications for compliance with PURA and Commission rules, as well as reviewing CCN applications' alternate transmission routes and making recommendations regarding such routes. While employed at the Commission, Mr. Ally

¹ TEX. R. EVID. 702.

² *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied).

³ Chimney Creek Land Company, LLC's Objections to Direct Testimony of Mohammed Ally, P.E. (Aug. 30, 2010).

⁴ *Id.* at 2.

⁵ TEX. R. EVID. 702 (emphasis added).

⁶ See Direct Testimony of Mohammed Ally, P.E. at Appendix A (Aug. 26, 2010).

⁷ *Id.*

has provided expert testimony in numerous CCN cases, including three previous Competitive Renewable Energy Zones (CREZ) CCN proceedings: Docket No. 37119, *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line in Jack, Parker, and Wise Counties, Texas*; Docket No. 37408, *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Riley to Bowman 345-kV CREZ Transmission Line within Archer, Wichita, and Wilbarger Counties, Texas*; and Docket No. 37778, *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*.⁸

Environmental integrity was an issue in each of these proceedings and Mr. Ally's testimony addressed the issue in each, as he has in this case, as it related to the routing factors identified in PURA. Specifically, the environmental impact of transmission routes can be analyzed in terms of the distances that the routes traverse terrain such as upland and riparian woodlands, the number of times a route crosses a stream or other body of water, and whether the route traverses terrain at locations that have been previously disturbed. This information is available in a CCN case from the Application and Environmental Assessment (EA), the comments provided by the Texas Parks and Wildlife Department (TPWD), and testimony provided by intervenors. Assessing and comparing this data among the various proposed routes does not require any specific scientific expertise, rather it requires experience analyzing transmission routes in a regulatory context as one of many factors to be considered in making a routing recommendation. This is precisely the experience that Mr. Ally has acquired and repeatedly applied in the course of his employment at the Commission and this experience unquestionably qualifies Mr. Ally to make a routing recommendation in this case and explain the analysis supporting that recommendation.

III. CONCLUSION

CCLC's Objections to Mr. Ally's testimony ignore Staff's role in CCN proceedings, the type of analysis conducted by Staff's I&R Division in these cases, and the valuable role that Staff's testimony serves in evaluating a CCN application in the context of intervenor concerns

⁸ *Id.* at Appendix A, B.

and the public interest generally. Staff is the only party to this case that represents the public interest and its voice should not be silenced. Staff respectfully requests that CCLC's Objections be overruled.

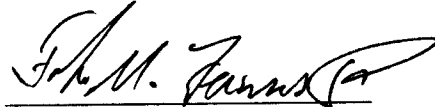
Date: September 3, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

Andres Medrano
Senior Attorney
Legal Division

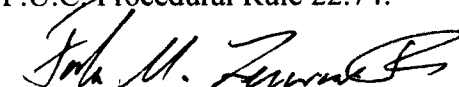


John M. Zerwas, Jr.
Attorney – Legal Division
State Bar No. 24066329
(512) 936-7297
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 3rd day of September, 2010, in accordance with P.U.C. Procedural Rule 22.74.

A handwritten signature in cursive script, appearing to read "John M. Zerwas, Jr.", is written over a solid horizontal line.

John M. Zerwas, Jr.