



Control Number: 38230



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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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STATEMENT OF LEGAL POSITION

ON

SELECTED ISSUES

ON BEHALF OF

FREIDA HARRISON, INTERVENOR

MOELLER LAW OFFICES

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ATTORNEY FOR FRIEDA HARRISON, INTERVENOR

The following constitutes a statement of the legal position of Intervenor Freida Harrison on selected legal issues raised by her intervention in the case. This statement is submitted to supplement the Direct Testimony filed herein on behalf of Freida Harrison, and not in lieu thereof.

ISSUE NO. 1: The cemetery

Applicant's map and application proposes that the route of Link FF bisect a dedicated cemetery. This is unlawful. Subject to various consent exceptions not applicable here, Section 711.035 of the Texas Health & Safety Code provides that

"(d.) A railroad, street, road, alley, pipeline, telephone, telegraph, electric Line, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery.....

(g.) Property is considered to be dedicated cemetery property if: (1.) one or more human burials are present on the property; "

See generally, Sacred Garden of Memory v. State of Texas, 334 S.W. 2d 220 (San Antonio, 1960) and OP AG JC-0235 (1960)

ISSUE NO. 2: Wetlands

The United States Department of Agriculture is the lead agency in identifying and delineating wetlands on grazing or agricultural land in the United States. The evidence will show that the process of identifying and certifying the presence of wetlands on the Harrison property is underway, and that the proposed Link FF will cross and bisect those wetlands on the north part of the Harrison property.

Section 404 of the United States Clean Water Act charges the US Army Corps of Engineers with the regulation of commercial development and public infrastructure on or near wetlands. Regulated activities, including the construction of transmission lines, are controlled by a permit process administered by the Corps. On information and belief, Lone Star has not initiated the appropriate permit process. Should Lone Star apply for a permit, it would be required to satisfy the Corps that it has taken all reasonable measures to avoid the wetlands, it has minimized potential impact on wetlands, and it has provided compensation in the form of wetland mitigation for any unavoidable impacts. In proposing Link FF, Lone Star

has not met its obligation under the Clean Water Act or under the regulations of the Corps of Engineers.

The Environmental Protection Agency has further and independent authority to regulate wetlands under Section 404 of the Clean Water Act, and, on information and belief, has not been consulted by Lone Star in routing Link FF.

The Texas Commission on Environmental Quality implements many sections of the Clean Water Act and the Safe Drinking Water Act on behalf of the United States. It has likewise not been consulted.

The Texas Department of Parks and Wildlife administers numerous programs to protect and manage wetlands. It has likewise not been consulted.

Lone Star's proposal that Link FF be among the possible alternative routes for the CREZ line is premature, and threshold legal issues pertaining to wetlands have been ignored. The PUC cannot designate Link FF as a CREZ line route until and unless those threshold issues are addressed by the appropriate agencies having direct regulatory authority over wetlands.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl H. Moeller", is written over a horizontal line.

Karl H. Moeller

Attorney for Intervenor Freida Harrison