



Control Number: 38324



Item Number: 639

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**SOAH DOCKET NO. 473-10-4789  
DOCKET NO. 38324**

**APPLICATION OF ONCOR  
ELECTRIC DELIVERY COMPANY,  
LLC, TO AMEND ITS CERTIFICATE  
OF CONVENIENCE AND NECESSITY  
FOR THE WILLOW CREEK TO  
HICKS 345-KV CREZ  
TRANSMISSION LINE IN DENTON,  
PARKER, TARRANT, AND WISE  
COUNTIES, TEXAS**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

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**DAVID NANCE, DAN NANCE, AND HALL-NANCE RANCHES, LTD.  
RESPONSE TO OBJECTIONS AND MOTIONS TO STRIKE INTERVENOR  
TESTIMONY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW David Nance, Dan Nance, and Hall-Nance Ranches, Ltd. ("Nances") and submit these their responses to the objections to and motions to strike intervenor direct prefled testimony, and in support would show the following:

**I. RESPONSES TO OBJECTIONS**

**A. Chapel Hill Objections.**

**Chapel Hill Objections to Nance witnesses Chase Rowan and Steve Howard direct.**

Chapel Hill claims that Chase Rowan's and Steve Howard's testimony is inadmissible or should be given little weight because they are employed by an affected party that could have intervened. Chapel Hill's objections should be overruled and its motions to strike denied.

The test for admissibility under the Texas Rules of Evidence is whether the testimony is probative of any material facts at issue in the case. Tex. R. Evid. 401, 402. Evidence is relevant if it tends to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. Tex. R. Evid. 401. Witnesses are competent if they have personal knowledge of facts at issue. Tex. R. Evid. 601 and 602.

The Nances are affected by Link LLLL and its related links. Accordingly, they are allowed to present any evidence that is probative of the value or disqualification of Link LLLL and its related links relative to other links. They also are allowed to present evidence that is probative of the relative lack of suitability of Link LLLL and its related links to alternative links like those that cross Rolling V Ranch, Walsh property, Bond property, and Chapel Hill.

The impact of Links AAA, GGG on the Preferred Route, and Link LLLL, JJJ, ZZZ, and other links on existing residential developments is a matter that is at issue in this proceeding, as is borne out by the fact that the impact on residential developments is included in Oncor's list of 39 criteria for evaluating the routes. Chase Rowan and Steve Howard are competent witnesses who have personal knowledge of the impact of Link LLLL and its related links on existing residential subdivisions. Thus, they are competent witnesses on an issue that is material in this proceeding. Because they have personal knowledge of the impact of Link LLLL and its related links on existing residential subdivisions, they are competent witnesses and their testimony is admissible.

Unlike Rolling V Ranch and Chapel Hill, Sendera Ranch West and Sendera Ranch East are existing subdivisions that, unlike Rolling V and Chapel Hill, are substantially built out. The extent to which existing subdivisions impacted by proposed links are merely planned or built out is a material issue. Mr. Rowan and Mr. Howard are competent to testify on the extent to which Sendera has been built out.

There is no rule, nor should there be one, that disqualifies an otherwise competent witness with personal knowledge of facts at issue from testifying because the entity with which he may be affiliated did not participate as a party. If there were such a rule, many competent witnesses would be prevented from testifying about facts within their personal knowledge when

those facts are relevant and probative. Such a result would be inconsistent with the general rule that relevant evidence should be liberally admitted to ensure a full and complete evidentiary record.

The Nances are allowed to challenge and support links in this application with relevant, competent evidence that is material and probative. Chase Rowan and Steve Howard are competent witnesses that have personal knowledge of facts relating to the impact of certain links. Those facts are relevant and probative of matters at issue in this proceeding. There is no reason to exclude their testimony in this proceeding.

**Chapel Hill Objections to Chase Rowan Direct.** Chapel Hill's objections to Nance witness Chase Rowan's direct should be overruled and Chapel Hill's motion to strike denied:

**Nance Responses to Chapel Hill Objections to Chase Rowan Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Entire testimony	Chase Rowan's testimony regarding impact of Links JJJJ, ZZZ, and LLLL on Sendera Ranch West.	Chase Rowan is a competent witness with personal knowledge of facts at issue in this proceeding. His testimony establishes the extent to which Sendera Ranch West has been built out and describes the impact of Link LLLL and related links on an established subdivision.

**Chapel Hill Objections to Steve Howard Direct.** Chapel Hill's objections to Nance witness Steve Howard's direct should be overruled and Chapel Hill's motion to strike denied.

**Nance Responses to Chapel Hill Objections to Steve Howard Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Entire testimony	Steve Howard's testimony	Steve Howard is a competent witness

	regarding impact of Links JJJJ, ZZZ, and LLLL on Sendera Ranch East.	with personal knowledge of facts at issue in this proceeding. His testimony establishes the extent to which Sendera Ranch East has been built out and describes the impact of Link LLLL and related links on an established subdivision.
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**B. Mr. & Mrs. Johnny Vinson Objections.**

**Vinson Objections to Jim Daniel Testimony.** Mr. & Mrs. Johnny Vinson's objections to Nance witness Jim Daniel claim that Mr. Daniel is not qualified as an expert on transmission line routing issues. The Vinson's objections should be overruled and their motions to strike denied.

Mr. Daniel has specialized knowledge regarding the matters upon which he testifies. He has special knowledge of electric utilities, including their transmission systems. He has special knowledge of ERCOT matters, about which this case is ultimately related. He has special knowledge regarding transmission costs of service, which is the ultimate impact of this proceeding.

More particularly, Mr. Daniel has special knowledge, experience, training, and expertise analyzing complex data in utility proceedings. Mr. Daniel has special knowledge and skill in the tabulation, computation, and analysis of complex data in Commission proceedings. That skill is one of the bases of his expertise in this case. Mr. Daniel has taken the data provided by the Company in its Application, has organized it, tabulated it, performed qualitative and quantitative analyses, and tabulated the results. He has evaluated the results in light of the Commission's standards for approval of transmission line routing.

Mr. Daniel has years of experience in PUC matters. He is familiar with Commission rules, order, and policies. He is familiar with the significance of, interpretation of, and reliance

on Commission deliberation and understands how to evaluate it. He has reviewed, evaluated, and applied Commission decisions in prior CREZ cases.

The test for admission of expert testimony is whether the testimony is based on specialized knowledge that will assist the trier of fact. Mr. Daniel's testimony is the product of the application of his skill in evaluating massive, complex, statistical and cost data. His testimony will assist the trier of fact in determining the relative statistical merits and qualifications of the routes and links in this proceeding. Of all the witnesses that have performed route analyses, only Mr. Daniel has performed a comprehensive, even-handed evaluation of the data included in the tables in Oncor's Application.

Mr. Daniel is very qualified, when considered against Vinson witness Larry Gurley. Mr. Daniel has testified many times at the PUC. Mr. Gurley has testified only once. Mr. Daniel has testified in many utility matters across the U. S. Mr. Gurley apparently has not. Mr. Daniel has many years of experience in evaluating utility data. Mr. Gurley does not claim such experience.

Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702. Mr. Daniel's testimony is based on specialized skills and knowledge. His testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding. Accordingly, Mr. Daniel is qualified to testify as an expert.

#### **Nance Responses to Vinson Objections to Jim Daniel Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Response</b>
P. 7, l. 7, 8	Mr. Daniel's opinion that Oncor's Route 222 is supported by the data he evaluated.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.

P. 7, l. 9, 10	Mr. Daniel's opinion that Link PPP and the southern routes are not viable in light of recent Commission rulings.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 7, l. 9, 10	Mr. Daniel's opinion that the primary criteria provided in Oncor's Application indicate that Route 222 should be selected.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 9, l. 5	Mr. Daniel's opinion that based on his evaluation of Oncor's data, Route 222 should be selected.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 14, l. 20-21	Mr. Daniel's opinion that the Preferred Route should be selected based on his analysis of Oncor's data.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 15, l. 8-10	Mr. Daniel's conclusion that the length the sub-route paralleled existing corridors was significant.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 15, l. 14	Mr. Daniel's opinion that the fact that the subroutes that included Link GGG paralleled existing corridors 57.7% and	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr.

	59.7%, while the average for all other subroutes was 48.7 % was significant.	Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 19, l. 2-5	Mr. Daniel's opinion that the portion of Oncor's Route 222 that includes Links WW-XX-NNNN-ZZ-AAA-GGG-OOO is supported by the data he evaluated.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 21, l. 16, 17	Mr. Daniel's opinion that Oncor's Route 222 is supported by the data he evaluated.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 21, l. 18, 19	Mr. Daniel's opinion that Link PPP and the southern routes are not viable in light of recent Commission rulings.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.
P. 21, l. 21, thru P. 22, l. 2	Mr. Daniel's opinion that the primary criteria provided in Oncor's Application indicate that Route 222 should be selected.	Mr. Daniel's testimony is admissible expert testimony under Tex. R. Evid. 702; Mr. Daniel's testimony is based on specialized skills and knowledge; Mr. Daniel's testimony will assist the trier of fact to determine the statistical qualifications of the routes and links in this proceeding.

### **C. Oncor Objections.**

**Oncor's Objections to David Nance Testimony.** Oncor's objections to David Nance's direct should be overruled and their motion to strike denied.



Relevancy. In its first two objections, Oncor claims that David Nance's testimony on Page 28, lines 4-7 and Mr. Nance's Exhibit DEN-4 are irrelevant because they violate the terms of the Order of Referral and Preliminary Order which prohibits consideration of compensation for condemnation. Oncor has misunderstood the purpose of the cited testimony, which is to assert that Oncor's determination of the cost of Link LLLL is not accurate because Oncor has used incorrect land valuations. The evidence is not offered to establish condemnation valuations.

The cost of the transmission lines is without any doubt an issue in this proceeding. Cost is included throughout Oncor's Application as a basis for its analysis of the routes and links. Moreover, Oncor's responses to RFIs expressly indicate that Oncor's costs were based on its own Market Study, which was nothing more than a compilation of land valuations.

The Nances offered the cited testimony and exhibit as evidence that Oncor's cost for Link LLLL was too low—the Nances did not offer it as probative of any issue relating to compensation for condemnation. Because the issue of the cost of the routes and links is a material issue and because the Nance's evidence is competent and probative on that issue, the evidence is not irrelevant and should be admitted. Oncor's objections should be overruled and its motions to strike denied.

Hearsay. Oncor lodges five objections to David Nance's testimony on the basis of hearsay. These objections focus on portions of David Nance's testimony that address the impact of the Line on the Fort Worth Comprehensive Plan and the Alliance\*Texas Growth Corridor.

*Fort Worth Comprehensive Plan.* Oncor has misunderstood the evidentiary status of the Comprehensive Plan and has misapplied the hearsay rule. The hearsay rule prohibits the introduction of out of court statements made by persons not in the hearing room that are offered for the truth of the assertions. Tex. R. Evid. 801. It does not prohibit verbal conduct that is in

and of itself a fact and that is not offered for the truth of the assertions but to establish their existence and their terms. Tex. R. Evid. 801(d). Such verbal conduct, termed “verbal acts” or “operative facts,” is not hearsay at all. The Fort Worth Comprehensive Plan is a verbal act or operative fact.

The Fort Worth Comprehensive Plan is not a declaration of any fact that is offered for the truth of that fact in this proceeding. It is the fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true. They are not declarations that are subject to being true or untrue. They simply are what they are.

It is the same rule that applies when a litigant offers a passage from legislative history, a statutory passage, a Commission rulemaking, a Commission rule, a judicial order, or a city ordinance. The document itself and its terms are facts. The statements in the document are neither true nor untrue, they simply are what the City approved. While there may be questions of authenticity, the statements are not subject to being challenged as false or untruthful.

There is no possibility that the City of Fort Worth was not being truthful when it listed its community values and made determinations regarding Nance Ranch in the Comprehensive Plan. There is no one that can be cross examined at the hearing to test the truth of the statements. Imagine the Mayor being cross examined about whether the City was truthful when it said that the City’s community values included being the most livable city in Texas. It is not a matter that can be tested for truth. It simply is.

Moreover, the Comprehensive Plan is not hearsay because it is not offered to establish the truth of the declarations contained in it. It is offered to establish the existence of and terms of the City’s policy. As the City’s declaration of its policy, the Comprehensive Plan is no more hearsay than PURA, than the Commission’s rules, than the acts of the Legislature, or than the

ordinances of any city. They are not declarations of facts that may be true or untrue. They are declarations of policy, rules, programs, and agenda. They are not hearsay.

The City adopted Hall-Nance Ranch as a Growth area in the Comprehensive Plan. There is no truth or falsehood about that fact that can be tested by excluding the Comprehensive Plan. It is not a matter that depends on the reliability of the declarant. The declarant was the City of Fort Worth and its was not declaring facts, it was pronouncing policy. Such pronouncements are inherently reliable and are not subject to exclusion because of any likelihood that they are potentially unreliable.

Even if they were hearsay, which they are not, they are subject to the public records exception. Tex. R. Evid. 803(8). The hearsay rule provides that public records in any form are an exception to the hearsay rule. Tex. R. Evid. 803(8). The basis of the rule is that such public records have a high degree of reliability. Thus, even if the Comprehensive Plan is hearsay, the public records exception applies.

Finally, even if the Comprehensive Plan was hearsay, which again, it is not, and even if it were not covered by the public records exception, which it is, specific matters covered within the Comprehensive Plan are within David Nance's personal knowledge. David Nance is a participant in public proceedings at the City of Fort Worth. He participated in the proceedings in which the Hall-Nance Ranch was made part of the Comprehensive Plan through the City's zoning ordinance. He has personal knowledge of the fact that the City of Fort Worth included Nance Ranch as a Growth Areas in the Comprehensive Plan.

Oncor challenged the Comprehensive Plan on the basis of authenticity under Chapter 9 of the rules of evidence. Oncor's challenge is without merit and the Plan is admissible. The City of Fort Worth maintains its official copy of the Comprehensive Plan online. Its online version is

the official Comprehensive Plan. The sheets attached are printouts of those web pages.

Accordingly, the documents are authentic. Tex. R. Evid. 901a, (b)(7).

The documents are authentic on their face, are determinable to be web pages by the ALJ, and are authenticated by their distinctive appearance, content, substance, internal patterns, distinctive characteristics, and the circumstances under Tex. R. Evid. 901(a), (b)(1), (b)(3), and (b)(4). Oncor's bald assertion that the documents are not authentic does not raise a fact issue. There is nothing alleged or asserted that indicates that the documents are not web pages and are not authentic.

*The Alliance\*Texas Growth Corridor.* The evidence is not hearsay. The characteristics of the Alliance\*Texas Growth Corridor are matters within David Nance's personal knowledge. The demonstrative material in Exhibit DEN-1 to which he refers illustrates facts that Mr. Nance knows. Mr. Nance is very well acquainted with the Alliance\*Texas area. His property, Hall-Nance Ranch, is across the railroad tracks from the Alliance\*Texas complex. Mr. Nance travels through the area regularly. Mr. Nance was involved in the Hwy 170 Extension plan, which is part of the Alliance\*Texas transportation plan. As a long time resident and property owner and community leader, Mr. Nance has personal knowledge of the history and development of the Alliance\*Texas complex.

The pages of DEN-1 are printouts from of web pages on the Alliance\*Texas website. They are not offered to establish the truth of any averments made within them but as demonstrative exhibits showing the area and nature of the Alliance\*Texas Growth Corridor regarding which David Nance testifies from his personal knowledge. The documents are what they appear to be, are supported by David Nance's offer of them as illustrative of the Alliance\*Texas area, are determinable to be web pages by the ALJ, and are authenticated by

their distinctive appearance, content, substance, internal patterns, characteristics, and the circumstances. Tex. R. Evid. 901(a) and (b)(1), (b)(3), and (b)(4). Oncor's bald assertion that the documents are not authentic does not raise a fact issue. There is nothing alleged or asserted that indicates that the documents are not web pages and are inauthentic.

### **Nance Responses to Oncor Objections to David Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 28, lines 4-7	David Nance's testimony that Oncor's cost of Link LLLL was incorrect because it used insufficient land valuations	The evidence is competent and probative of a material fact: the cost of Link LLLL. Accordingly it is relevant to a material issue and should be admitted. Tex. R. Evid. 401, 402.
Exhibit DEN-4	David Nance's exhibit supporting his testimony that Oncor's cost of Link LLLL was incorrect because it used insufficient land valuations	The evidence is competent and probative of a material fact: the cost of Link LLLL. Accordingly it is relevant to a material issue and should be admitted. Tex. R. Evid. 401, 402.
Page 18, lines 1-8	David Nance's testimony regarding the basis of the vitality of the Alliance*Texas Growth Corridor	The evidence is not hearsay. The characteristics of the Alliance*Texas Growth Corridor are matters within David Nance's personal knowledge. The demonstrative material in Exhibit DEN-1 to which he refers illustrates facts that Mr. Nance knows. Mr. Nance is very well acquainted with the Alliance*Texas area. His property, Hall-Nance Ranch, is across the railroad tracks from the Alliance*Texas complex. Mr. Nance travels through the area regularly. Mr. Nance was involved in the Hwy 170 Extension plan, which is part of the Alliance*Texas transportation plan. As a long time resident and property owner and community leader, Mr. Nance has personal knowledge of the history and development of the Alliance*Texas complex. Tex. R. Evid. 601, 602, 801(d).
Page 19, lines 9-14	David Nance's testimony	The Fort Worth Comprehensive Plan is

	regarding community values stated in the Fort Worth Comprehensive Plan	not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact. It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. There is no question that the are reliable. They are offered for the fact that they exist and declare the City's policy. They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay. Tex. R. Evid. 601, 602, 801(d).
Page 20, lines 8-12	David Nance's testimony regarding community values stated in the Fort Worth Comprehensive Plan	The Fort Worth Comprehensive Plan is not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact. It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. There is no question that the are reliable. They are offered for the fact that they exist and declare the City's policy. They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay. Tex. R. Evid. 601, 602, 801(d).
Exhibit DEN-1	David Nance exhibit demonstrating the nature, layout, and location of the Alliance*Texas Growth Corridor	The pages of DEN-1 are printouts from of web pages on the Alliance*Texas website. They are not offered to establish the truth of any averments made within them but as demonstrative exhibits showing the area and nature of the Alliance*Texas Growth Corridor regarding which David Nance testifies from his personal knowledge. The documents are what they appear to be, are supported by David Nance's offer of them as illustrative of the Alliance*Texas area, are clearly determinable to be web pages by the

		ALJ, and are authenticated by their distinctive appearance, content, substance, internal patterns, distinctive characteristics, and the circumstances under Tex. R. Evid. 901(a) and (b)(1), (b)(3), and (b)(4). Oncor's bald assertion that the documents are not authentic does not raise a fact issue. There is nothing alleged or asserted that indicates that the documents are not web pages and are inauthentic.
Exhibits DEN-2	David Nance's exhibit attaching portions of the Fort Worth Comprehensive Plan	<p>The Fort Worth Comprehensive Plan is not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact. It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. They are not offered for their truth. They are offered for the fact that they exist and declare the City's policy. Tex. R. Evid. 801(d). They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay.</p> <p>The City maintains its official copy of the Comprehensive Plan on its website. The documents are authentic on their face, are determinable to be web pages by the ALJ, and are authenticated by their distinctive appearance, content, substance, internal patterns, distinctive characteristics, and the circumstances under Tex. R. Evid. 901(a) and (b)(1), (b)(3), and (b)(4). Oncor's bald assertion that the documents are not authentic does not raise a fact issue. There is nothing alleged or asserted that indicates that the documents are not web pages and are inauthentic.</p>
Exhibit DEN-3	David Nance's exhibit containing excerpts of the files of the City of Fort Worth	This exhibit contains information from the zoning cases at the City of Fort Worth in which David Nance was a

	Zoning cases that rezoned Nance Ranches and in which Mr. Nance was a participant	participant. They are not hearsay because they are ordinances of the City. Tex. R. Evid. 801(d). They are subject to the Public Record Exception. Tex. R. Evid. 803(8). They are authenticated by the certificate of the Secretary of the City of Fort Worth, attached. Tex. R. Evid. 803(8), 902(1).
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**Oncor's Objection to Dan Nance Testimony.** Oncor objects to Dan Nance's testimony on the basis of hearsay and on claims that because a public comment filing in this case was submitted by a non-party, the filing cannot be made an exhibit to another party's testimony. Oncor's objections to Dan Nance's direct should be overruled and their motion to strike denied.

Dan Nance's testimony is an observation of the comments filed in this case either in the record of the docket or submitted to Oncor at the open houses and provided to the parties in discovery. Dan Nance's use of this information is no different than Oncor's use of similar information in its Part 5.0 of its Application, where it summarizes the findings of the open houses and in Appendix A, where it includes agency correspondence: it is merely a reflection of the comments that have been submitted by the persons that have been in contact with the Commission.

If Oncor can refer to questionnaires, comments, and letters that were filed in this proceeding in its Application, a document that is certain to be offered and admitted into the evidentiary record, then there can be no prohibition against including such comments as exhibits attached to filings in this proceeding for inclusion in the evidentiary record, as Dan Nance has done.

Like the comments from the open houses and the letters from affected agencies that Oncor included in its Application, the letter attached to Dan Nance's testimony reflects that the



residents of the Avondale-Hwy 287/81 area along Link HHH have expressed their concern. Like Oncor's comments and letters, the letter attached to Dan Nance's testimony is not offered as proof of the truth of its contents, but as evidence of the concern that motivated the filing. It is the filing itself that is the fact it is offered to establish, not the truth of the contents of the letter. Accordingly, the letter is not hearsay and, applying the same standard applicable to Oncor's Application, it is admissible to demonstrate the concerns of the persons submitting the comment. Tex. R. Evid. 801(d), 802.

#### **Nance Responses to Oncor Objections to Dan Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 19, lines 12-22	Dan Nance testimony regarding Avondale Community's concern over health effects of Links FFF-HHH-JJJ	Dan Nance's testimony reflects that the residents of the Avondale-Hwy 287/81 area along Link HHH have expressed their concern. Like Oncor's comments and letters, the letter attached to Dan Nance's testimony is not offered as proof of the truth of its contents, but is offered as evidence of the concern that motivated the filing. It is the filing itself that is the fact it is offered to establish, not the truth of the contents of the letter. Accordingly, the letter is not hearsay and, applying the same standard applicable to Oncor's Application, it is admissible to demonstrate the concerns of the persons submitting the comment. Tex. R. Evid. 801(d), 802.
Exhibit DLN-4	Rachel Viece public comment, PUC Interchange Item	The letter attached to Dan Nance's testimony reflects that the residents of the Avondale-Hwy 287/81 area along Link HHH have expressed their concern. Like Oncor's comments and letters, the letter attached to Dan Nance's testimony is not offered as proof of the truth of its contents, but is offered as evidence of the concern that motivated the filing. It is the filing itself that is the fact it is

		offered to establish, not the truth of the contents of the letter. Accordingly, the letter is not hearsay and, applying the same standard applicable to Oncor's Application, it is admissible to demonstrate the concerns of the persons submitting the comment. Tex. R. Evid. 801(d), 802.
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**Oncor's Objection to Chase Rowan's Testimony.** Oncor's objections to Chase

Rowan's direct should be overruled and their motion to strike denied.

Oncor claims Mr. Rowan does not have personal knowledge of the facts stated and that the assertion is hearsay. Mr. Rowan does have personal knowledge. Mr. Rowan is or has been the Sendera West contact with the Homeowners' Association, and as such, has personal knowledge of the Associations' position. Moreover, the statement is not hearsay because Mr. Rowan, as a participant in the Association, is making the statement in the hearing and is subject to cross examination. Tex. R. Evid. 801(d), 802.

**Nance Responses to Oncor Objections to Chase Rowan Testimony**

Page/Line/Exhibit	Testimony	Basis to overrule objection/deny motion to strike
Page 8, lines 1-7	Chase Rowan's testimony regarding the Sendera homeowners association opposition to Link LLLL and that Sendera homeowners moved to the community to enjoy the aesthetics, which did not include the transmission line.	Mr. Rowan is the Sendera Ranch West contact with the Homeowners' Association, and as such, has personal knowledge of the Association's position. The statement is not hearsay because Mr. Rowan is an associate of the Association and the statement is not made out of court.

**Oncor's Objections to Steve Howard Testimony.** Oncor's objections to Steve

Howard's direct should be overruled and their motion to strike denied.

Oncor did not complete its objection to Steve Howard's testimony, leaving the paragraph to end after merely quoting the applicable testimony. However, assuming it is the same objection that Oncor made to Chase Rowan's testimony in the paragraph above it, the same response is applicable.

Like Mr. Rowan, Mr. Howard is also active in the Sendera HOA and has personal knowledge of its positions. Again, because he is an associate of the HOA, his statements are not hearsay because they are made in the hearing while testifying and subject to cross. Tex. R. Evid. 801(d), 802.

**Nance Responses to Oncor Objections to Steve Howard Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 5, line 23 – page 6, line 3	Steve Howard's testimony regarding the Sendera homeowners association opposition to Link LLLL and that Sendera homeowners moved to the community to enjoy the aesthetics, which did not include the transmission line.	Mr. Howard is the Sendera Ranch East contact with the Homeowners' Association and, as such, has personal knowledge of the Association's position. The statement is not hearsay because Mr. Howard is an associate of the Association and the statement is not made out of court.

**Oncor's Objections to Gary H. Hazlewood Testimony.** Oncor's objections to Gary H. Hazlewood's direct should be overruled and their motion to strike denied.

Oncor claims that Mr. Hazlewood's testimony is unqualified expert testimony, that the references to EMF studies is not specific, and that the facts asserted are hearsay. Oncor has misunderstood the purpose of Mr. Hazelwood's testimony, which can only be understood in the context of his next statement, that such studies in the public domain, in the hands of buyers, will cause them not to consider Letara if the Line is built on Link LLLL.

Mr. Hazlewood does not claim to be an expert on the scientific basis of the results of such studies. However, he does have personal knowledge that the studies exist in the public domain and what their impact is on buyers. Thus, the statements are not unqualified expert testimony, but are offered as the basis for his lay opinions, rationally based on his perceptions of the impact of such studies on buyers. Tex. R. Evid. 701. His statements are relevant to the inquiry and helpful to the decision maker because they illuminate the impact of the fear buyers may have of purchasing homes near the transmission line. Tex. R. Evid. 701.

Moreover, the statements are not hearsay. Mr. Hazelwood does not offer the statements in the EMF studies for their truth, but offers them to support his statement, one within his personal knowledge and based on his experience, that the existence of such studies will discourage buyers from locating within Letara if the Line is built along it. Because the studies are not offered for their truth, the references to them are not hearsay. Tex. R. Evid. 801(d), 802.

#### **Nance Responses to Oncor Objections to Gary Hazlewood Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 10, lines 9 through 16 ["Yes. . leukemia."]	Gary Hazlewood's recitation of the existence of studies in the public domain that are indicative of health impacts of EMF.	Mr. Hazelwood does not offer the statements for their truth, but offers them to support his statement, within his personal knowledge and based on his experience, that the existence of such studies will discourage buyers from locating within Letara if the Line is built along it. Mr. Hazlewood does not claim expertise on the scientific truth of the statement, but he has personal knowledge that the studies exist in the public domain and what their impact is on buyers.

**D. Rolling V WCID Objections.**

**Rolling V Objections to Dan Nance Testimony.** Rolling V claims in both of its objections that Dan Nance has no demonstrated personal knowledge of the matters about which he testifies. Rolling V's claims are incorrect. Rolling V's objections to Dan Nance's direct should be overruled and their motion to strike denied.

As he testified, Dan Nance has been a long time resident of the Haslet-Avondale-Rhome area. He is involved in the community. He owns substantial properties throughout the area. His family settled the area in the 1950s and has been a community fixture since that time. One of the Northwest ISD elementary schools has been named after his father and mother. Mr. Nance, as well as or better than anyone in the area, knows first hand the makeup of land holdings in the area, including the area in the Avondale/Hwy. 287/81 Growth Corridor and the part of the Preferred Route east of Eagle Mountain Lake.

There is no requirement for a witness own the land about which he testifies and there is no prohibition against a witness testifying about properties and regions that he does not own. A witness may testify about any property if he has personal knowledge about the property. Tex. R. Evid. 401, 402, 601, 602. If, as a long time resident of the area, he has personal knowledge, then that knowledge qualifies him to testify. As Dan Nance testified, he has been a long time resident of the area and knows the area. On the basis of that knowledge, he is qualified to testify.

Dan Nance has demonstrated the basis of his personal knowledge in his testimony. Accordingly, Mr. Nance is a competent witness and his testimony relates to matters within his personal knowledge. His testimony is admissible under Tex. R. Evid. 601 and 602.

**Nance Responses to Rolling V Objections to Dan Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
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Page 17, line 7 through Page 23, line 2	Dan Nance's testimony regarding the impact of Link HHH and related links on the Avondale/Hwy 287/81 Growth Corridor	Dan Nance has personal knowledge of the matters about which he testifies. As he testified, Dan Nance has been a resident of the Haslet-Avondale-Rhome area since birth; he is a community leader; he owns substantial properties throughout the area; his family settled the area in the 1950s and has been a community fixture since that time; one of the Northwest ISD elementary schools has been named after his father and mother. Mr. Nance knows first hand the makeup of land holdings in the area, including the land on the Preferred Route. Tex. R. Evid 601, 602.
Page 23, line 4, through Page 26, line 20	Dan Nance's testimony on the economic and community impacts of the Preferred Route on the areas east of Eagle Mountain Lake	Dan Nance has personal knowledge of the matters about which he testifies. As he testified, Dan Nance has been a resident of the Haslet-Avondale-Rhome area since birth; he is a community leader; he owns substantial properties throughout the area; his family settled the area in the 1950s and has been a community fixture since that time; one of the Northwest ISD elementary schools has been named after his father and mother. Mr. Nance knows first hand the makeup of land holdings in the area, including the land on the Preferred Route. Tex. R. Evid 601, 602.

**Rolling V Objections to David Nance Testimony.** Rolling V has objected to various parts of David Nance's testimony on the basis that Mr. Nance lacks personal knowledge to testify regarding the matters he addresses. In each instance, Mr. Nance's testimony reflects that he has extensive personal knowledge of the issue. Rolling V's objections to David Nance's direct should be overruled and their motion to strike denied.

Moreover, like Oncor, Staff, and YA Spring, Rolling V also incorrectly claims that Mr. Nance's Exhibits DEN-1 and DEN-2 are hearsay. Rolling V also erroneously claims Nance did not file Exhibit DEN-5.

The Nances' response to each of these objections are stated in the following table. As the responses indicate, David Nance's testimony reflects that he has personal knowledge of the areas he describes and the subjects he addresses and his exhibits are not hearsay.

**Nance Responses to Rolling V Objections to David Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 15, line 13 through page 18, line 8, plus	David Nance's testimony regarding the impact of Link LLLL on the Alliance Growth Corridor	As he testified, David Nance has personal knowledge of the Alliance*Texas Growth Corridor and his observations regarding the impact of Link LLLL on that Corridor are rationally based on his perceptions and personal knowledge. David Nance's properties and home are in the immediate area. The characteristics of the Alliance*Texas Growth Corridor are matters within David Nance's personal knowledge. The demonstrative material in Exhibit DEN-1 to which he refers illustrates facts that Mr. Nance knows. Mr. Nance is very well acquainted with the Alliance*Texas area. His property, Hall-Nance Ranch, is across the railroad tracks from the Alliance*Texas complex. Mr. Nance travels through the area regularly. Mr. Nance was involved in the Hwy 170 Extension plan, which is part of the Alliance*Texas transportation plan. As a long time resident and property owner and community leader, Mr. Nance has personal knowledge of the history and development of the Alliance*Texas complex. Mr. Nance has personal knowledge of this matter. Tex. R. Evid 601, 602, 701.

Exhibit DEN-1	David Nance exhibit demonstrating the nature, layout, and location of the Alliance*Texas Growth Corridor	The pages of DEN-1 are printouts from of web pages on the Alliance*Texas website. They are not offered to establish the truth of any averments made within them but as demonstrative exhibits showing the area and nature of the Alliance*Texas Growth Corridor regarding which David Nance testifies from his personal knowledge. Thus, they are not hearsay. Tex. R. Evid. 801(d). The documents are what they appear to be, are supported by David Nance's offer of them as illustrative of the Alliance*Texas area, are clearly determinable to be web pages by the ALJ, and are authenticated by their distinctive appearance, content, substance, internal patterns, distinctive characteristics, and the circumstances under Tex. R. Evid. 901(a) and (b)(1), (b)(3), and (b)(4).
Page 18, line 10 through page 21, line 19	David Nance's testimony regarding the impact of Link LLLL and related links on the Fort Worth Comprehensive Plan	As his testimony reflects, David Nance has personal knowledge of the Fort Worth Comprehensive Plan. He gained that knowledge from is participation in Fort Worth civic affairs and from his participation in the Fort Worth zoning case that rezoned Nance Ranches, as he describes in his testimony. The Fort Worth Comprehensive Plan declares the City's policy. That policy include the Plan's classification of Nance Ranch as a Mixed Use Growth Center. As the Applicant in the zoning case, David Nance has personal knowledge of the City's classification of Nance Ranch as a Mixed Use Growth Center. Accordingly, David Nance has personal knowledge of the matters about which he is testifying. Tex. R. Evid. 601, 602, 701.
Exhibit DEN-2	David Nance's exhibit attaching relevant portions of the Fort Worth Comprehensive Plan	The Fort Worth Comprehensive Plan is not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact.



		<p>It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. They are not offered for their truth. They are offered for the fact that they exist and declare the City's policy. They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay. Tex. R. Evid. 801(d).</p>
<p>Page 25, line 17 through page 27, line 14</p>	<p>David Nance's testimony regarding the Highway 170 Extension Project</p>	<p>David Nance has personal knowledge of the Highway 170 Extension project. The project crosses his land, as reflected in Exhibit DEN-3. It was proposed as part of the rezoning by the City of Fort Worth, in which David Nance was a participant, and about which he has testified in his testimony. The Highway 170 Extension is the central feature or "centerpiece" of the rezoning. The Highway 170 Extension ties into the Alliance*Texas master thoroughfare plan. As the Applicant in the Fort Worth zoning cases, David Nance was instrumental in proposing the Extension. He has personal knowledge of the Extension, as he states in his testimony. Accordingly, David Nance is a competent witness with personal knowledge. Tex. R. Evid. 601, 602.</p>
<p>Page 28, line 9, through page 40, line 10</p>	<p>David Nance's testimony regarding the impact on existing communities, subdivisions, and developments in the Avondale-Haslet area.</p>	<p>As he testified, David Nance has personal knowledge of the existing communities, subdivisions, and developments in the Avondale-Haslet area. As a long-time resident of the area, an area in which his family settled in the 1950s, David Nance has a thorough first hand knowledge of the location, nature, character, aesthetics, and community values of these communities, subdivisions, and developments. Though he does not own a tract in this area, his tracts and his home are located all</p>

		<p>around this area. His personal knowledge about the area in which he grew up and where he lives and owns property is not limited to the boundaries of the property that he owns. His contacts with the community are extensive. His opinions about this area are rationally based on his observations and personal knowledge. Tex. R. Evid. 601, 602, 701.</p>
Exhibit DEN-5	David Nance's exhibit containing the City of Haslet's Resolution #R 017-2010 supporting the Preferred Route and opposing Links JJJ, III,, LLLL, and QQQ	The exhibit was prefiled at the Commission at the time of filing David Nance's testimony.
Page 44, line 5 through page 47, line 6	David Nance's testimony regarding the topography, social and/or economic geography, community values, and/or aesthetics of the areas east of Eagle Mountain Lake crossed by the Preferred Route, Links WW-XX-NNNN-ZZ-ZZZ-GGG-OOO.	<p>As he testified, David Nance has personal knowledge of the areas east of Eagle Mountain Lake that would be crossed by the Preferred Route. As a long-time resident of the area, an area in which his family settled in the 1950s, David Nance has a thorough first hand knowledge of the location, nature, character, aesthetics, and community values of this area east of Eagle Mountain Lake. Though he does not own a tract in this area, his tracts and his home are located all around this area. His personal knowledge about the area in which he grew up and where he lives and owns property is not limited to the boundaries of the property that he owns. His contacts with the community are extensive. His opinions about this area are rationally based on his observations and personal knowledge. Tex. R. Evid. 601, 602, 701.</p> <p>David Nance's testimony regarding the positions of the Cities of Haslet, Azle, and Reno are based on the filings those cities made in this docket. Thus, his conclusions are not hearsay, but are based on his personal knowledge. Tex. R. Evid. 601, 602, 701. The filings of</p>

		the cities are verbal acts or operative facts. Accordingly, they are not hearsay. Tex. R. Evid. 801(d). To the extent they are hearsay, they fall within the Public Records Exception. Tex. R. Evid. 803(8).
Page 47, line 8 through page 50, line 3	David Nance testimony regarding the significance of the large developments on the Preferred Route, including Vinson, Rolling V, Walsh, Bonds, and Chapel Hill	As his testimony reflects, Mr. Nance is well acquainted with the areas owned by these large tracts. See Nance direct at 43-44. David Nance has personal knowledge of the areas east of Eagle Mountain Lake that would be crossed by the Preferred Route. As a long-time resident of the area, an area in which his family settled in the 1950s, David Nance has a thorough first hand knowledge of the location, nature, character, aesthetics, and community values of this area east of Eagle Mountain Lake. Though he does not own a tract in this area, his tracts and his home are located all around this area. His personal knowledge about the area in which he grew up and where he lives and owns property is not limited to the boundaries of the property that he owns. His contacts with the community are extensive. His opinions about this area are rationally based on his observations and personal knowledge. Tex. R. Evid. 601, 602, 701.

#### **E. Staff Objections.**

**Staff Objections to Gary H. Hazlewood Testimony.** Staff's objections to joint Nance and TTT Farms witness Gary H. Hazlewood's direct should be overruled and their motion to strike denied.

Like Oncor, Staff objects that the cited testimony is unqualified expert testimony and hearsay. Again, as explained above, Staff has misunderstood the purpose of Mr. Hazelwood's testimony and has taken it out of context. Taken in its proper context, it is evident that Mr.

Hazlewood is testifying that in the hands of home buyers, such studies, which are in the public domain, will cause them not to consider Letara if the Line is built on Link LLLL.

Mr. Hazlewood does not hold himself out as an expert on the scientific basis of such studies. However, he does have personal knowledge that the studies exist in the public domain and what their impact is on buyers. Thus, the statements are not unqualified expert testimony, but are offered as the basis for his lay opinions regarding the impact of the study on home sales, opinions which are permissible because they are rationally based on his perceptions of the impact of such studies on buyers. Tex. R. Evid. 701. His statements are relevant to the case and helpful to the decision maker. Tex. R. Evid. 701.

Moreover, the statements are not hearsay. Mr. Hazelwood does not offer the statements for their truth, but offers them to support his own conclusion, one within his personal knowledge and based on his experience, that the existence of such studies will discourage buyers from locating within Letara if the Line is built along it. Because the studies are not offered for their truth, the references to them are not hearsay. Tex. R. Evid. 801(d), 802.

#### **Nance Responses to Staff Objections to Gary H. Hazlewood Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Page 10, lines 9 through 21 ["Yes. . public relations issue."]	Mr. Hazlewood's recitation of the existence of studies in the public domain that are indicative of health impacts of EMF.	Mr. Hazelwood does not offer the statements for their truth, but offers them to support his statement, within his personal knowledge and based on his experience, that the existence of such studies will discourage buyers from locating within Letara if the Line is built along it. Mr. Hazlewood does not claim expertise on the scientific truth of the statement, but he has personal knowledge that the studies exist in the public domain and what their impact is on buyers. Tex. R. Evid

**Staff Objections to David Nance Testimony.** Staff's objections to David Nance's direct should be overruled and their motion to strike denied.

Staff claims that Mr. Nance's description of the Fort Worth Comprehensive Plan and his attachment of part of that Plan as an exhibit is hearsay because Mr. Nance did not author the Plan. Like Oncor, Staff has misunderstood the evidentiary status of the Comprehensive Plan and has misapplied the hearsay rule.

The hearsay rule prohibits the introduction of out of court statements made by persons not in the hearing room that are offered for the truth of the assertions. It does not prohibit verbal conduct that is in and of itself a fact and that is not offered for the truth of the assertions but to establish their existence and their terms. Such verbal conduct, termed "verbal acts" or "operative facts," is not hearsay at all. The Fort Worth Comprehensive Plan is a verbal act or operative fact.

The Fort Worth Comprehensive Plan is not hearsay. It is a verbal act or an operative fact. It is not a declaration of any fact that is offered for the truth of that fact in this proceeding. It is the fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true. They are not declarations that are subject to being true or untrue. They simply are what they are.

It is the same rule that applies when a litigant offers a passage from legislative history, from a statutory passage, from a Commission rulemaking transcript, from a Commission rule, for a judicial order, or from a city ordinance. The document itself and its terms are the facts. The statements in the document are neither true nor untrue, they simply are what the City approved. While there may be questions of authenticity, the statements are not subject to being challenged as false or untruthful.

There is no possibility that the City of Fort Worth was not being truthful when it listed its community values. There is no one that can be cross examined in court to test the truth of the statements. Imagine the Mayor being cross examined about whether the City was truthful when it said that the City's community values included being the most livable city in Texas. It is not a matter that can be tested for truth. It simply is.

The City adopted Hall-Nance Ranch as a Growth area and included them in the Comprehensive Plan. There is no truth or falsehood that can be tested by excluding the Comprehensive Plan. It is not a matter that depends on the reliability of the declarant. The declarant was the City of Fort Worth and its was not declaring facts, it was pronouncing policy. Such pronouncements are not

Even if the Plan is hearsay, which it is not, it is subject to the public records exception. Tex. R. Evid. 803(8).

It should be noted that Staff did not challenge the Comprehensive Plan on the basis of authenticity under Chapter 9 of the rules of evidence. But even if it had, the Plan would be admissible. The City of Fort Worth maintains its official copy of the Comprehensive Plan online. Its online version *is* the official Comprehensive Plan. The sheets attached are printouts of those web pages. Accordingly, the documents are authentic. Tex. R. Evid. 901(a), (b)(7).

Finally, even if the Comprehensive Plan was hearsay, which again, it is not, and even if it were not covered by the public records exception, which it is, specific matters covered within the Comprehensive Plan are within David Nance's personal knowledge. David Nance is a participant in public affairs in the Fort Worth. He participated in the proceedings in which the Hall-Nance Ranch was made part of the Comprehensive Plan through the City's Zoning and Planning Department. He has personal knowledge of the "truth" of the fact that Hall-Nance

Ranch is one of the Growth Areas included in Fort Worth's Comprehensive Plan. Tex. R. Evid. 601, 602, 701.

**Nance Responses to Staff Objections to David Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
Pages 18 through 20	David Nance's testimony regarding the impact of Link LLLL and related links on the Fort Worth Comprehensive Plan	The Fort Worth Comprehensive Plan is not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact. It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. They are not offered for their truth. They are offered for the fact that they exist and declare the City's policy. They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay. Tex. R. Evid. 801(d).
Exhibit DEN-2	David Nance's exhibit attaching relevant portions of the Fort Worth Comprehensive Plan	The Fort Worth Comprehensive Plan is not hearsay. It is verbal act or an operative fact. It is not a declaration of any fact offered for the truth of that fact. It is a fact itself. There is no question about whether the statements in the Fort Worth Comprehensive Plan are true or untrue. They are not offered for their truth. They are offered for the fact that they exist and declare the City's policy. They are no more hearsay than PURA is hearsay, than the Commission's rules are hearsay, than the acts of the Legislature are hearsay, or than the ordinances of any city are hearsay. Tex. R. Evid. 801(d).

**F. YA Spring Magnolia Objections.**

**YA Spring Magnolia Objections to David Nance Testimony.** YA Spring Magnolia's objections to David Nance's direct should be overruled and YA's motion to strike denied. While in its objection, YA recites applicable evidentiary principles at length, YA has seriously misapplied the principles it has recited. For example:

Hearsay. YA claims that recitation of and attachment of the Fort Worth Comprehensive Plan is "hearsay." Please see the argument above responsive to Oncor's and Staff's similar objections. Like Oncor and Staff, YA fails to recognize that documents such as the Comprehensive Plan, like statutes, orders, acts, ordinances, rules, and policies, are not statements about which there is any issue of truth or falsehood. They are neither true nor untrue. They do not contain any declarations of fact. Rather, they are facts in and of themselves. They are verbal acts or operative facts. Thus, they are not hearsay. Tex. R. Evid. 801(d).

The Comprehensive Plan is similar to an ordinance. It also similar to PURA, the Commission's rules, or preambles to the Commission's rules. It is not a declaration by an out of court declarant offered to prove the truth of the declarant's statement. Its terms are facts in and of themselves. It is not possible to argue whether PURA, the Commission's rules, or the preambles to Commission rules were true or untrue when they were approved. They are what they are and they must be observed. The Comprehensive Plan is similar. There is no question about whether it is true or untrue. It says what it says and it has declared Fort Worth's plan, its community values, and its classifications of various properties. Therefore, it is not hearsay. Tex. R. Evid. 801(d).

To the extent the Comprehensive Plan is hearsay, it is subject to the Public Records Exception. Tex. R. Evid. 803(8).



Improper Valuation. YA claims that testimony regarding property valuation is improper valuation. While partially correct, YA has overstated its claim. The cost of the links of the transmission line is a material issue in this proceeding. Because the cost of the Line includes the cost of right of way, valuation of the property to be acquired for right of way is a material issue. Evidence of property values is clearly relevant because it is a component and probative of the cost of the links.

Oncor filed assertions regarding the cost of the routes in its Application. Oncor based its cost estimates on property valuations. In discovery, Oncor provided valuations on which it based its cost determinations. Oncor's use of property values to determine cost proves that valuation is relevant.

Valuation testimony is not offered here to establish condemnation awards, but to challenge Oncor's determination of the cost of the links. Accordingly, it is entirely proper. YA has overstated the principle and has misapplied it in its objections where it objects to testimony regarding valuation relevant to cost.

Speculation/Lack of Personal Knowledge. YA claims that Mr. Nance has no personal knowledge of any facts related to any areas in the community in which he resides, other than his own property. YA assumes that Mr. Nance knows nothing about anything in the area other than his own tracts. This is an unreasonable and incorrect claim. Mr. Nance testified that as a long time resident of the area, he is familiar with all aspects of the area. Mr. Nance is a member of a family that settled in the area in the 1950s and have been leaders in the community ever since. He himself is a community leader. He has wide, extensive personal knowledge of the physical layout and geography of the area, the land uses in the community, the demographics of the community, the community's plans, the community's values, the aesthetic values of the

community, the community's various sub-communities, subdivisions, residential and commercial areas, and the interaction of the elements of the community. Mr. Nance is well qualified to testify from his personal knowledge about the community and to draw reasonable inferences and state lay opinions based on his personal knowledge and perceptions. Tex. R. Evid 601, 602, 701.

Future Property Uses. YA claims that future property uses are irrelevant. This claim is broadly overstated. Future property uses are relevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Highway 170 Extension plan. Future property uses that are based in established plans are probative of facts at issue in this proceeding. In those instances, future uses are not mere speculation, but are probative of expected uses and are, therefore, relevant. Tex. R. Evid. 401, 402.

Speculation. YA mistakes Mr. Nance's understanding of community values and processes based on his longstanding presence in the community for speculation. It is speculation when a witness has no basis for an opinion or inference, no knowledge of the basis of his claim, and when there is no rational connection to his perception. However, when a witness has observed facts and as a result of those observations has come to possess knowledge of facts that suggest patterns and relationships, then when the witness draws conclusions about those patterns and relationships he is not speculating but has drawn inferences rationally based on his perception or personal knowledge.

Tex. R. Evid. 701 allows witnesses to state opinions and draw inferences if those opinions and inferences are rationally based on the perception of the witness and are helpful to a clear understanding of the witnesses' testimony or the determination of a fact at issue. Tex. R. Evid. 701. Community values and aesthetic values are material issues in this proceeding. David

Nance is an established member of the community. He is active in the community. He is a community leader. He has had years of opportunity to gain personal knowledge and to perceive matters about which he now testifies. He is, therefore, qualified to testify regarding community values. Such testimony is based on his own perceptions and personal knowledge. Rule 701 allows him to draw rational inferences about community values.

**Nance Response to YA Spring's Objections to David Nance Testimony.** The Nances responses to YA Spring's objections to David Nance's testimony are set out in the following table:

**Nance Responses to YA Spring Objections to David Nance Testimony**

<b>Page/Line/Exhibit</b>	<b>Description of Testimony</b>	<b>Basis to overrule objection/deny motion to strike</b>
p. 16, l. 9-13	David Nance's observations regarding the importance of the Alliance Growth Corridor	As a long time resident, active member of the community, and community leader, Mr. Nance has personal knowledge of the importance of the Alliance Growth Corridor. He passes by or through it many times each week. He is personally familiar with its history. He and his family have negotiated agreements with Hillview, the Perot company that built Alliance Airport and developed Alliance*Texas. The Alliance Growth Corridor is a matter about which David Nance has personal knowledge. Tex. R. Evid. 601, 602.
P 18; l. 4-5	David Nance observation that Alliance*Texas brochures reflect that Alliance seeks to attract businesses with clean and compelling environment.	The brochures are demonstrative of facts within David Nance's personal knowledge. Mr. Nance is intimately familiar with the Alliance Growth Corridor. The statements in the brochures are offers, which are verbal facts, offered to demonstrate the proposal, not offered for the inherent truth of the statements. Tex. R. Evid. 801(d).

p. 18; l. 6-8	David Nance's conclusion that placing the Line on the edge of the Alliance*Texas would work against marketing tactics.	The testimony is not speculation, but is a lay opinion rationally based on David Nance's perception and personal knowledge of the Alliance*Texas facility, its history, its inception, growth, and development. Tex. R. Evid. 601, 602, 701.
p. 19; l. 9-14	David Nance's recitation of the community values included in the Fort Worth Comprehensive Plan	The Fort Worth Comprehensive Plan is not hearsay. It is a fact in and of itself, just as the contents of PURA is a fact, as the contents of a City Ordinance are verbal acts or operative facts and are not matters that are true or untrue. The Fort Worth Comprehensive Plan is an operative fact. The provisions of the plan are not declarations. They are ordinances of a city. Their truth is not at issue. Moreover, because the City of Fort Worth maintains its official copies online, the attachments are authentic. Tex. R. Evid 801(d), 901.
Ex. DEN-1	David Nance exhibit including selected web pages from the Alliance*Texas website.	Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.
Ex. DEN-2	David Nance exhibit including excerpts from the Fort Worth Comprehensive Plan.	The terms of the Fort Worth Comprehensive Plan are not hearsay. They are not out of court statement offered for their truth. They are verbal acts or operative facts. They are facts, in and of themselves. Tex. R. Evid. 801(d). Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. Tex. R. Evid. 401, 402.
p. 19; l. 14-16	David Nance's description of the community values stated	The terms of the Fort Worth Comprehensive Plan are not hearsay.

	in the City of Fort Worth's Comprehensive Plan	They are not out of court statement offered for their truth. They are verbal acts or operative facts. They are facts, in and of themselves. Tex. R. Evid. 801(d).
p. 19; l. 20-23	David Nance's description of the strategies for achieving community values stated in the City of Fort Worth's Comprehensive Plan	The terms of the Fort Worth Comprehensive Plan are not hearsay. They are not out of court statement offered for their truth. They are verbal acts or operative facts. They are facts, in and of themselves. Tex. R. Evid. 801(d).
p. 20; l. 8-12	David Nance's description of the community values stated in the City of Fort Worth's Comprehensive Plan	The terms of the Fort Worth Comprehensive Plan are not hearsay. They are not out of court statement offered for their truth. They are verbal acts or operative facts. They are facts, in and of themselves. Tex. R. Evid. 801(d).
p. 20; l. 12-15	David Nance's conclusion that placing the Line outside the Alliance*Texas Corridor along the Highway 170 Extension would be antithetical to the Fort Worth Comprehensive Plan.	The testimony is not speculation, but is a lay opinion rationally based on David Nance's perception and personal knowledge of the Alliance*Texas facility, its history, its inception, growth, and development, his personal knowledge of the Highway 170 Extension Project, and his familiarity with the Fort Worth Comprehensive Plan. Tex. R. Evid. 601, 602, 701.
p. 20; l. 15-18	David Nance's testimony regarding the importance of aesthetic quality to maintain the vitality of the goals of the Comprehensive Plan	The testimony is admissible lay opinion rationally based on David Nance's perception and personal knowledge of the Alliance*Texas facility, its history, its inception, growth, and development, his personal knowledge of the Highway 170 Extension Project, and his familiarity with the Fort Worth Comprehensive Plan. Tex. R. Evid. 601, 602, 701.
p. 21; l. 11-15	David Nance's testimony regarding the Alliance Airport 3-mile height hazard.	
p. 21; l. 17-19	David Nance's testimony regarding the Alliance Airport 3-mile height hazard.	
p. 22; l. 10-13	David Nance's testimony	Future property uses are not irrelevant

	regarding the City of Fort Worth's plans to route the Highway 170 Extension through the Nance properties.	when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.
Ex. DEN-3	David Nance's exhibit including excerpts from the City of Fort Worth's zoning cases that rezoned the Nance Ranch	The exhibit is not hearsay. As he testified, David Nance was the Applicant in the zoning proceedings. Thus, he was a participant and has personal knowledge of the facts that are represented in the exhibit. Tex. R. Evid. 601, 602, 701. In addition, the City's decision in the Zoning case is a verbal act or operative fact. The documents are not offered for the truth of their contents but to show that the City has zoned the property. Tex. R. Evid. 801(d). Finally, even if the documents are hearsay, they are subject to the Public Records exception. Tex. R. Evid. 803(8).
p. 25; l. 8-15	David Nance's testimony regarding the impact of the Line on the City of Fort Worth's zoning of Mr. Nance's property, the Nance Ranches	<p>A lay witness is qualified to testify regarding the impact of conditions on his own property. Such testimony is rationally based on the witness' perceptions and personal knowledge. A landowner has specialized knowledge and expertise regarding his own property and the impact of certain conditions on that property. It does not require expert knowledge to provide meaningful and helpful testimony regarding such impacts. The landowner, more than anyone else, is in a unique position to provide such testimony. Tex. R. Evid. 401, 402, 601, 602, 701.</p> <p>Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In</p>

		such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.
p. 25; l. 20-23 & p. 26; l. 1-3	David Nance's testimony regarding the integration of the Highway 170 Extension into the rezoning of the Nance Ranches, the Alliance*Texas plan, the City of Haslet's plan, and the City of Fort Worth's Comprehensive Plan.	Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.
p. 26; l. 16-23	David Nance's description of the planned route of the Highway 170 Extension.	Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.
p. 27; l. 4-9	David Nance's testimony regarding how Link LLLL will make the Highway 170 Extension impossible.	<p>Future property uses are not irrelevant when those property uses are incorporated with specificity into an established program, like the Fort Worth Comprehensive Plan and the Alliance*Texas thoroughfare plan. In such an instance, future values are not mere speculation, but are probative of expected uses. Tex. R. Evid. 401, 402.</p> <p>The testimony is admissible lay opinion rationally based on David Nance's perception and personal knowledge of the Highway 170 Extension, which was an aspect of the Fort Worth zoning cases in which David Nance was a party, and which is included in the Alliance*Texas thoroughfare plan, the Fort Worth Comprehensive Plan, and the zoning ordinances issued by Fort Worth in the zoning cases in which Mr. Nance participated. Tex. R. Evid. 601, 602, 701.</p>

		<p>Mr. Nance's testimony is not speculation. He is well versed in the proposed location of the Highway 170 Extension where it crosses his property, in the proposed location of Link LLLL, in the actual location of oil and gas wells that constrain the location of the Line and the Highway Extension, and Oncor's claims regarding the impossibility of moving the location of Link LLLL. He can testify regarding rational inferences rationally based on his perception and personal knowledge. Tex. R. Evid. 601, 602, 701.</p>
p. 27; l. 13-14	<p>David Nance's testimony regarding the increased cost of Link LLLL caused by the rezoning of Nance Ranch and the Highway 170 Extension.</p>	<p>The cost of the line is a material issue. Oncor based its cost estimates on its Market Study. Mr. Nance is qualified to testify regarding the market value of his land. Mr. Nance has personal knowledge regarding the rezoning and the Highway 170 Extension. Mr. Nance is permitted to draw inferences regarding the impact of the correct value of his land on the cost of Link LLLL that are rationally based on his perception and personal knowledge. His testimony is not speculation but his conclusions based on his personal knowledge of the impact of the rezoning and the Highway 170 Extension.</p>
p. 27; l. 20-23	<p>David Nance's comment on the partial validity of the Market Study.</p>	<p>Mr. Nance's testimony is not hearsay because the author of the Study is Oncor, who is a party in this case.</p> <p>Mr. Nance's testimony is a qualified opinion because it is a lay opinion rationally based on Mr. Nance's perception, his personal knowledge of land values in the area around his tracts, and the results of the appraisal attached to his testimony. Tex. R. Evid. 601, 602, 701.</p>
p. 27; l. 23 & p.	<p>David Nance's testimony that</p>	<p>The testimony is not improper. The cost</p>



28; l. 1	the Market Study does not correctly state the value of the Nance tracts that are crossed by Link LLLL.	of the line is a material issue. Oncor included it in its Application and has provided its Market Study in discovery that indicates the estimated land values Oncor used in its cost estimates. Because cost is a material issue in dispute, land valuation that relates to or provides the basis for determining the cost of routes and Links is relevant and admissible. Tex. R. Evid. 401, 402, 601,602, 701.
p. 28; l. 1-4		The cost of the line is a material issue. Oncor included it in its Application and has provided its Market Study in discovery that indicates the estimated land values Oncor used in its cost estimates. Because cost is a material issue in dispute, land valuation that relates to or provides the basis for determining the cost of routes and Links is relevant and admissible. Tex. R. Evid. 401, 402, 601,602, 701.
Ex. DEN-4	David Nance's exhibit including recent appraisal of Nance property	The testimony is not improper. The cost of the line is a material issue. Oncor included it in its Application and has provided its Market Study in discovery that indicates the estimated land values Oncor used in its cost estimates. Because cost is a material issue in dispute, land valuation that relates to or provides the basis for determining the cost of routes and Links is relevant and admissible. Tex. R. Evid. 401, 402, 601,602, 701.
p. 28; l. 4-7	David Nance's testimony that the cost of right of way for Link LLLL and related links would be higher than the cost of right of way for links on the Preferred Route	Mr. Nance's testimony is a qualified opinion because it is a lay opinion rationally based on Mr. Nance's perception, his personal knowledge of land values in the area around his tracts, and the results of the appraisal attached to his testimony. Tex. R. Evid. 601, 602, 701.  Mr. Nance's testimony is not based on

		hearsay because it is based on his own perception and personal knowledge, on the Oncor Market Study, which is prepared by a party in this case, and on the Nance's personal opinion of the value of his own property which, although supported by the appraisal attached to his testimony, he is independently qualified to render. Tex. R. Evid. 601, 602, 701, and 801(d).
p. 31; l. 1-3	David Nance's testimony that the Sendera Ranch development would be severely impacted by Link LLLL and related links	The testimony is not hearsay. Mr. Nance has personal knowledge of the Sendera Ranch development, of the proposed location of Link LLLL and related links, and the resulting impact. He states a conclusion rationally based on his own knowledge and perception. His testimony notes that Mr. Rowan and Mr. Howard have addressed that impact. Tex. R. Evid. 601, 602, 702, 801(d), 803.
p. 31; l. 7-9	David Nance's testimony that the Letara development would be severely impacted by Link LLLL and related links	The testimony is not hearsay. Mr. Nance has personal knowledge of the Letara development, of the proposed location of Link LLLL and related links, and the resulting impact. He states a conclusion rationally based on his own knowledge and perception. His testimony notes that Mr. Hazlewood has addressed that impact. Tex. R. Evid. 601, 602, 702, 801(d), 803.
p. 32; l. 4-5	David Nance's testimony regarding the impact of fear of EMF	Mr. Nance's testimony is a qualified opinion because it is a lay opinion rationally based on Mr. Nance's perception, his personal knowledge of community fears of EMF, his personal knowledge and perception of the growth of subdivisions in the community, his personal knowledge and perception of land values in the area around his tracts, and his personal knowledge and perception about how adverse conditions affect the salability of property and the impact on property values. Tex. R. Evid.
p. 32; l. 5-6	David Nance's testimony that fear of EMF will make it harder for landowners to sell their homes	
p. 32; l. 6	David Nance's testimony that fear of the transmission line will lower property values	

		601, 602, 701.
p. 32; l. 15-17	David Nance's observations about perceptions regarding the dangers of EMF	The testimony is not speculation. As he testified, Mr. Nance is involved with the Community. As a member of an established family and as a result of his active involvement with the community, he is a community leader. Mr. Nance's testimony is a qualified opinion rationally based on Mr. Nance's perceptions and personal knowledge of the community's values, the community's fears about EMF, the dangers perceived by the community related to the proximity of a transmission line. It is also based on his personal knowledge and perception of his own and others' perceptions about the dangers of and impact of a transmission line near residential subdivisions. Tex. R. Evid. 601, 602, 701.
p. 32; l. 17-19	David Nance's observations about the impact of mowed transmission corridors	
p. 32; l. 19-22	David Nance's observations about perceptions by others that transmission lines put downward pressure on property values	
p. 33; l. 2-3	David Nance's observation that fears about the impact of transmission lines are real	
p. 33; l. 7-9	David Nance's observations about secondary impacts from public perception	
p. 33 ;l. 12-13	David Nance's observations that properties near transmission lines are considered second rate	
p. 33; l. 13-15	David Nance's observations about the impact of visual blight on community vitality	
p. 35; l. 14-20	David Nance's testimony that there are more families in the eastern edge of the Study Area than along the very populated PPP area	The testimony is not speculation or unqualified expert testimony. It is based on Mr. Nance's personal knowledge of the area, his perceptions on the ground of the developments in both area, and his perceptions from Oncor's maps, Figure 6-97
p. 39; l. 17-19	David Nance's testimony regarding the harmful impact of Links FFF, HHH, and JJJ	As he testified, David Nance has been a long term resident of the community and is personally familiar with all aspects of the area. He has personal knowledge of the community. He has watched the community grow and change. He is a community leader and involved with

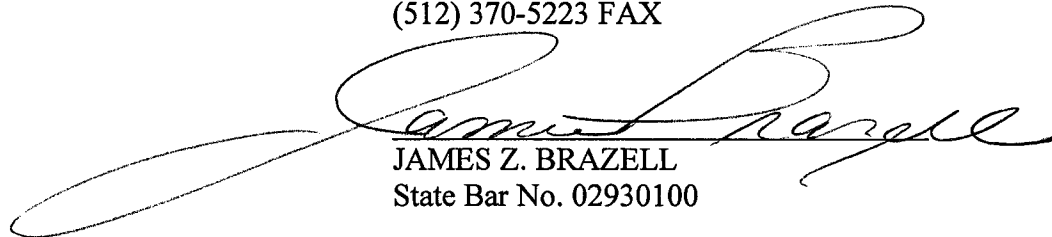
		community institutions. He has personal knowledge of the matters declared. Tex. R. Evid 601, 602. He is not speculating, but is drawing rational inferences from his perceptions and personal knowledge. Tex. R. Evid. 702.
Exhibit DEN-5	David Nance's exhibit containing the City of Haslet's Resolution #R 017-2010 supporting the Preferred Route and opposing Links JJJ, III,, LLLL, and QQQ	The exhibit was prefiled at the Commission at the time of filing David Nance's testimony.
Exhibit DEN-6	David Nance's exhibit attaching portions of Nance route adequacy filings that document the Nance's requests for minor modifications.	Exhibit DEN-6 was timely filed with David Nance's direct at 1:30 p.m. on September 3, 2010

## II. SUMMARY, CONCLUSION, AND PRAYER

For the reasons stated, the Nances move for the ALJ and the Commission to overrule each of the objections to their testimony and to deny each of the motions to strike.

Respectfully submitted,

LAW OFFICE OF JAMES Z. BRAZELL  
100 Congress Avenue, Suite 2000  
Austin, Texas 78701  
(512) 370-5222 Direct  
(512) 370-5223 FAX

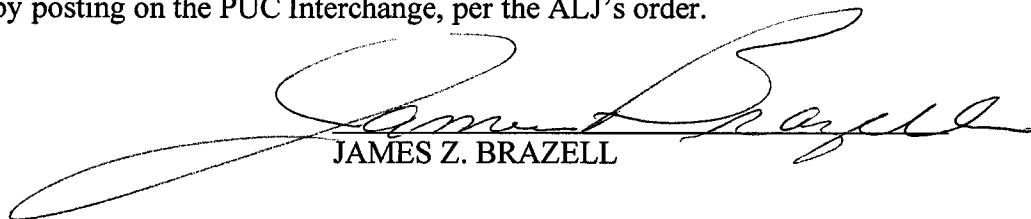


JAMES Z. BRAZELL  
State Bar No. 02930100

**ATTORNEY FOR DAVID NANCE, DAN  
NANCE, AND HALL-NANCE RANCHES,  
LTD.**

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of September 2010 a true and correct copy of the foregoing document was served upon all parties by facsimile, First-class United States mail, postage paid, and/or by posting on the PUC Interchange, per the ALJ's order.



JAMES Z. BRAZELL