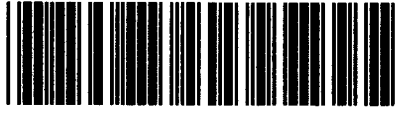




Control Number: 38484



Item Number: 178

Addendum StartPage: 0

SOAH DOCKET NO. 473-10-5919  
P.U.C. DOCKET NO. 38484

APPLICATION OF WIND ENERGY § BEFORE THE STATE OFFICE  
TRANSMISSION TEXAS, LLC FOR A §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY FOR THE SCURRY § OF  
SOUTH – LONG DRAW – GRELTON – §  
ODESSA 345-kV CREZ TRANSMISSION §  
LINE IN SCURRY, MITCHELL, §  
BORDEN, HOWARD, DAWSON, §  
MARTIN, MIDLAND AND ECTOR § ADMINISTRATIVE HEARINGS  
COUNTIES §

RECEIVED  
30 NOV 5 PM 2:15  
FILED  
PERMIAN BASIN LIMITED PARTNERSHIP

OCcidental’s RESPONSE TO WETT’s OBJECTION AND MOTION TO STRIKE PORTIONS OF THE DIRECT TESTIMONY OF THOMAS J. PAYTON

I. INTRODUCTION

Oxy USA WTP LP, Permian Basin Limited Partnership and Occidental Petroleum Ltd. (collectively, “Occidental”) file this Response to the Objection and Motion to Strike Portions of Certain Intervenor Prefiled Direct Testimony filed by Wind Energy Transmission Texas, LLC (“WETT”). Pursuant to Order No. 7, this Response is timely filed.

WETT’s objections and motion to strike the testimony of Occidental’s corporate representative, Thomas J. Payton, are meritless and, given the crucial nature of the testimony, highly surprising. Contrary to WETT’s assertions, Mr. Payton’s testimony is not impermissible expert opinion, hearsay or speculation. Rather, Mr. Payton’s testimony is properly admissible lay witness testimony by a corporate representative. His testimony reflects personal knowledge he has obtained during his 30 years of employment at Occidental, his numerous visits to the oil and gas fields at issue in this case, and his personal review of Occidental infrastructure maps and other materials. Mr. Payton’s testimony is relevant to the facts in this case, and the Commission should not be deprived of record testimony that could assist in the decision they will make regarding the best route for the proposed transmission line. WETT’s objections and motion to strike Mr. Payton’s testimony should be denied.

II. DISCUSSION

All of WETT’s objections to Mr. Payton’s testimony fall into three categories: (1) unqualified expert opinions; (2) hearsay; and (3) speculation. These objections are based on

WETT's misreading of Mr. Payton's testimony and the relevant law on permissible lay witness and corporate representative testimony.

**A. Mr. Payton provides permissible lay witness testimony based on his personal knowledge.**

Mr. Payton is not offered as an expert witness, and he does not provide any expert opinion testimony whatsoever. Rather, a plain reading of the 17 statements that WETT describes as "unqualified expert opinion" show that they are actually either (1) statements of fact; or (2) statements of opinion rationally based on Mr. Payton's perceptions that constitute permissible lay testimony under Texas Rule of Evidence 701. These statements are clearly admissible, would assist the trier of fact, and should not be struck.

**1. *Statements of Fact***

Mr. Payton's testimony includes two categories of fact statements: (a) statements of fact based on his personal knowledge, including his knowledge of the oil and gas fields that WETT proposes to transverse with its transmission line; and (b) statements of fact regarding Occidental's corporate position. Both types of fact statements are permissible under Texas law, and neither can even remotely be described as "expert opinion testimony."

**a. *Statements of fact based on Mr. Payton's personal observations.***

It is an uncontroversial point that all witnesses may testify to facts within their personal knowledge. As sworn to in the affidavit attached to his testimony, Mr. Payton's testimony is based on facts about which he has personal knowledge. Mr. Payton has visited the fields discussed in his testimony on several occasions, including two visits for the express purpose of preparing his testimony in this case. Further, he has personally reviewed Occidental's field maps and has personal knowledge regarding the infrastructure located in those fields.

Many of the statements that WETT has termed "expert opinions" are actually factual statements based on Mr. Payton's familiarity with Occidental's oil and gas fields. For example, when Mr. Payton testifies that if the transmission line were to be shifted from its current proposed location to another location on the Sharon Ridge field "there will be additional well interferences and many additional road, pipeline and electric distribution interferences,"<sup>1</sup> he is not providing an opinion. Rather, he is conveying facts regarding the numerous wells, roads, pipelines and electric distribution lines located on either side of the preferred route and that

---

<sup>1</sup> See WETT Motion at 7.

interferences would occur if the line were to be moved. His factual statements are based on his personal knowledge of the field. WETT's attempt to reclassify such factual statements as expert opinions should be rejected.

b. *Statements of fact regarding Occidental's corporate position.*

As Occidental's corporate representative, Mr. Payton is also permitted to provide the Commission with factual statements regarding Occidental's position in this case. A corporation cannot speak except through its representatives.<sup>2</sup> Thus, under Texas law, a corporation may offer evidence through the testimony of its employees.<sup>3</sup> This feature of the law is particularly important in contested administrative proceedings in which the Commission's decision must be based on substantial evidence, or face reversal.<sup>4</sup>

Many of the statements that WETT describes as "opinions" are actually factual statements of Occidental's position on various issues. For example, when Mr. Payton testifies that "Occidental's position is that the surface owner does not have the legal right to grant an easement to WETT for any of these links" and that "Occidental will actively defend and pursue that position," Mr. Payton is not giving an opinion. Rather, he is informing the Commission of Occidental's position as a matter of fact.<sup>5</sup> Similarly, when Mr. Payton testifies that "it is Occidental's position that even in its current location, any excavations within the boundaries of Sharon Ridge should be done by hand or by hydraulic excavation," he is not giving his own opinion but is instead giving a factual statement of Occidental's position. These factual statements are clearly relevant to the Commission as they bear upon the time and expense that would be involved in constructing certain routes.

**2. *Permissible lay opinion testimony***

Portions of Mr. Payton's testimony constitute opinions based on his personal knowledge that are thus admissible under black letter law. Texas Rule of Evidence 701 provides that lay

---

<sup>2</sup> *Marshall v. Baltimore & Ohio R. Co.*, 57 U.S. 314, 328 (1854); see also *Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex. 1995) ("Corporations, by their very nature, cannot function without human agents.").

<sup>3</sup> See *In re EI DuPont de Nemours and Co.*, 136 S.W.3d 218, 224 (Tex. 2004); see also *Waite v. BancTexas-Houston, N.A.*, 792 S.W.2d 538, 540 (Tex. App.—Houston 1990, no writ).

<sup>4</sup> See *CPL v. Pub. Util. Comm'n*, 36 SW 3d 547, 557 (Tex. App.—Austin 2000, pet. denied).

<sup>5</sup> Mr. Payton's testimony clearly states that he is not providing an expert legal opinion but instead is "only testifying that it is Occidental's position and that Occidental will actively defend and pursue that position." Direct Testimony of Thomas J. Payton at 10. WETT appears to have ignored this fact.

witnesses may offer opinions that are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.<sup>6</sup> All of Mr. Payton's statements are based on his personal perceptions of the fields and infrastructure, informed by his personal experiences working for Occidental, and are designed to assist the Commission with its determination of the best place to site the transmission line.

WETT's objections run counter to the established body of law regarding permissible lay opinion testimony. The boundaries of permissible lay testimony are summed up particularly well by the Court of Criminal Appeals in *Osborn v. State*:

A distinct line cannot be drawn between lay opinion and expert testimony because all perceptions are evaluated based on experiences. However, as a general rule, observations which do not require significant expertise to interpret and which are not based on a scientific theory can be admitted as lay opinions if the requirements of Rule 701 are met. This is true even when the witness has experience or training. Additionally, even events not normally encountered by most people in everyday life do not necessarily require the testimony of an expert. The personal experience and knowledge of a lay witness may establish that he or she is capable, without qualification as an expert, of expressing an opinion on a subject outside the realm of common knowledge.<sup>7</sup>

Lay witnesses may offer opinions that are rationally related to their experiences during the course of their employment, and may make general observations based on those experiences.<sup>8</sup> For instance, in addition to the numerous cited examples, corporate representatives may offer opinion testimony regarding the effects of contracts to which their companies are a party if those

---

<sup>6</sup> Tex. R. Evid. 701.

<sup>7</sup> 92 S.W.3d 531, 537 (Tex. Crim. App. 2002) (emphasis added) (citing *United States v. James Earl Paiva*, 892 F.2d 148, 157 (1st Cir. 1989)).

<sup>8</sup> *Souder v. Cannon* 235 S.W.3d 841 (Tex. App.—Fort Worth 2007, no pet.) (contractor gave permissible opinion testimony regarding responsible parties and alternative measures that should have been undertaken based on his experience in the construction industry and personal knowledge about the nature of the construction jobs at issue); *Hartis v. Century Furniture Industries, Inc.* 230 S.W.3d 723 (Tex. App.—Houston 2007) (company employee gave permissible lay opinion concerning market price where employee had experience selling similar items); *Smith v. Doyle*, 1994 WL 88855 at \*7 (Tex. App.—Houston 1994) (police officer's testimony that speed was not a contributing factor to accident was permissible lay opinion where it was based on his own experience and perceptions and helpful to the jury's determination of negligence); *Laprade v. Laprade*, 784 S.W.2d 490, 492 (Tex. App.—Fort Worth 1990, pet. denied) (lay witness testimony concerning the value of a business was proper where the witness had knowledge of the business's accounts receivable, had run the business for five years, knew what was paid for each of the business's trucks, and knew the value of other, smaller businesses for sale).

opinions are helpful to an understanding of their testimony or a fact at issue.<sup>9</sup> Lay witnesses may also offer opinion testimony on matters such as value and causation.<sup>10</sup>

All of the opinion testimony offered by Mr. Payton is directly related to his personal perceptions and the knowledge and experience he has gained as an employee of Occidental; thus, no expert qualifications are necessary. For example, WETT objects to Mr. Payton's statement that any 345-kV transmission structures should be located such that, if they toppled, they would not puncture pipelines laid on the surface of an oil field that carry poisonous gases.<sup>11</sup> This opinion does not require expert qualifications; rather, it is a statement based on Mr. Payton's personal perception, experience, and, quite frankly, common sense. Moreover, the law *presumes* the personal knowledge requirement is satisfied here, since Mr. Payton's testimony concerns matters that one holding his positions<sup>12</sup> may be fairly expected to know.<sup>13</sup>

Although WETT baldly alleges that Mr. Payton has offered testimony outside his personal knowledge, WETT has done absolutely no discovery—whether through deposition or requests for information—to test the basis of Mr. Payton's opinions. A party attacking a lay witness's qualifications to offer an opinion “must examine the witness and test the basis of his knowledge.”<sup>14</sup> WETT has not done so here. Mr. Payton's sworn affidavit testimony that “every statement contained herein is true and correct and based on my own personal knowledge” is uncontroverted. If WETT suspects that Mr. Payton does not have personal knowledge of the facts underlying his opinion testimony, it has the opportunity to conduct discovery, take his deposition, or to cross-examine Mr. Payton at the hearing. WETT's attempt to deprive the

---

<sup>9</sup> *Bunker v. Landstar Ligon, Inc.*, 136 S.W.3d 372 (Tex. App.—Corpus Christi 2004, no pet.).

<sup>10</sup> *Gulf States Utils. Co. v. Low*, 79 S.W.3d 561, 566 (Tex. 2002) (value); *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 733 (Tex. 1984) (causation).

<sup>11</sup> See WETT Motion at 7.

<sup>12</sup> Mr. Payton currently holds the titles of Senior Vice President Power for Occidental Energy Ventures Corp. and Vice President for Occidental Power Marketing, L.P. Mr. Payton has also held numerous other positions within the company in which he has dealt with infrastructure issues. Mr. Payton's testimony includes a description of his responsibilities and personal experiences in engineering, operating, and business management positions during his 30 year career at Occidental. See Direct Testimony of Thomas Payton at 1-2.

<sup>13</sup> *In re EI DuPont de Nemours and Co.*, 136 S.W. 3d at 224; *Saronikos, Inc. v. City of Dallas*, 285 S.W.3d 512, 516 (Tex. App.—Dallas 2009, no pet.).

<sup>14</sup> *Star Houston, Inc. v. Kundak*, 843 S.W.2d 294, 299 (Tex. App.—Houston 1992); see also *Coker v. Burghardt*, 833 S.W.2d 306, 309 (Tex. App.—Dallas 1992, writ denied).

Commission of the ability to consider relevant testimony at this stage is baseless and inappropriate.

**B. Mr. Payton's testimony is not based on hearsay.**

None of Mr. Payton's testimony can be considered hearsay. WETT alleges that four statements made by Mr. Payton regarding Occidental's position in this case are based on impermissible hearsay. However, Texas courts have consistently held that a corporate representative's testimony may be based on his employer's information and statements without running afoul of the hearsay rule. Generally speaking, if the testimony concerns knowledge of matters gained "during his employment, the facts are admissible as a common law exception to the hearsay rule."<sup>15</sup> A corporate representative's testimony that is based on discussions or information obtained from the corporation, including the corporation's pleadings, constitutes testimony based on personal knowledge.<sup>16</sup> Similarly, a corporate representative's direct testimony regarding the corporation's litigation position is not hearsay and does not run afoul of the personal knowledge requirement.<sup>17</sup> It appears that WETT may be unfamiliar with the well-established law regarding hearsay as it relates to corporate representative testimony. Mr. Payton's statements regarding Occidental's corporate position are all allowed by the Texas Supreme Court's decision in *In re EI DuPont de Nemours and Co.*, which established that a corporate representative's awareness of corporate positions constitutes "personal knowledge," and that statements based on such personal knowledge are not hearsay.<sup>18</sup> WETT's hearsay objections to Mr. Payton's testimony should therefore be rejected.

**C. Mr. Payton's statements are not speculation.**

Finally, WETT objects to three of Mr. Payton's statements on the basis that they are speculative. Testimony is merely speculative and of no evidentiary value when they are based on conjecture, *i.e.*, without personal knowledge of the underlying facts.<sup>19</sup> However, Mr.

---

<sup>15</sup> *Waite*, 792 S.W.2d 538, 540.

<sup>16</sup> *In re EI DuPont de Nemours and Co.*, 136 S.W. 3d at 224.

<sup>17</sup> *Austin Traffic Signal Const. Co., L.P. v. Transdyn Controls, Inc.*, 2010 WL 3370292 at \*7 (Tex. App.—Austin 2010, no pet. h.).

<sup>18</sup> 136 S.W. 3d at 224.

<sup>19</sup> *See Wal-Mart Stores, Inc. v. Gonzalez*, 968 SW 2d 934, 938 (Tex. 1998).

Payton's testimony is not based on conjecture—it is based on his personal knowledge and the information provided by WETT in its application.

The supposedly objectionable statements made by Mr. Payton concern the effects of shifting the proposed lines elsewhere on the oil and gas fields that WETT proposes to traverse.<sup>20</sup> For example, WETT has proposed to route the new transmission line between an existing transmission line and a road on the Sharon Ridge field. Mr. Payton has personal knowledge of the complicated and congested infrastructure located on either side of this proposed path. His testimony that there “will be additional well interferences and many additional road, pipeline and electric distribution interferences” if the line was moved from the currently proposed route to a new route is not based on speculation but is instead based on Mr. Payton's personal knowledge of the existing infrastructure.

WETT's statement that Mr. Payton's testimony is too speculative because “structure placement has not been decided” is particularly galling.<sup>21</sup> WETT cannot shut down valid testimony regarding potential problems with its proposal simply by being vague in the information it provides to intervenors. And the basis for Mr. Payton's testimony is not conjecture about where the transmission line will be placed; rather, the testimony is based on his direct knowledge of Occidental's operations and facilities in areas other than the proposed routes. There is nothing conjectural about Occidental's operations and infrastructure in these areas, and thus his testimony is proper.<sup>22</sup>

---

<sup>20</sup> WETT Objections at 21-22.

<sup>21</sup> *Id.*

<sup>22</sup> See *Ethicon, Inc. v. Martinez*, 835 S.W.2d 826, 832 (Tex. App.—Austin 1992, writ denied).



### III. SPECIFIC OBJECTIONS

Page, Line	Portion of Testimony Objected to	Response to Objection
<b>Unqualified Expert Opinion – WETT Objection at pp. 7-11</b>		
p. 6, lines 13-17	Any 345-kV transmission structures should be located such that if they toppled, they would not puncture any pipeline. This is especially important given the nature of these pipelines.	Statement based on Mr. Payton’s personal knowledge regarding the location and hazardous contents of pipelines, his personal experience, and common sense ( <i>i.e.</i> , pipelines with hazardous materials should not be punctured).
p. 7, lines 27-28 and p. 8, lines 1-2.	If shifted elsewhere to cross Sharon Ridge, there would almost certainly be much more pipeline and electric distribution infrastructure interference, well spacing problems and construction coordination issues. These issues have been discussed earlier in this section.	Statement based on Mr. Payton’s personal knowledge of Sharon Ridge infrastructure and operations, his personal experience, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).
p. 8, lines 14-17.	However, if the placement of Link UY2 were shifted out of the narrow strip between CR 1610 and the existing Oncor 138-kV transmission line, then there will be additional well interferences and many additional road, pipeline and electric distribution interferences.	Statement based on Mr. Payton’s personal knowledge of Sharon Ridge infrastructure and operations, his personal experience, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).
p. 9, lines 3-4	No. WETT would be required to adjust its plans to avoid any new infrastructure and to avoid interfering with Sharon Ridge’s construction activities.	Statement of Occidental’s corporate position based on Mr. Payton’s personal knowledge.
p. 9, line 26-29.	Having said this, it is Occidental’s position that even in its current location, any excavations within the boundaries of Sharon Ridge should be done by hand or by hydraulic excavation, also known as “hydrovac,” to at least four feet (4’) of depth before utilizing traditional mechanical excavation methods.	Statement of Occidental’s corporate position based on Mr. Payton’s personal knowledge.

Page, Line	Portion of Testimony Objected to	Response to Objection
p. 10, line 9-14 & 16-17.	Occidental's position is that the surface owner does not have the legal right to grant an easement to WETT for any of these links ... This position holds regardless of whether the easement were to be voluntarily granted or involuntarily taken through condemnation. Occidental's Statement of Position filed in this case contains a more detailed explanation of Occidental's position with regard to this subject ... No. I am testifying that it is Occidental's position and that Occidental will actively defend and pursue that position.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
p. 10, lines 21-24	It will be difficult to route a transmission line through Sharon Ridge at a location other than that recommended by WETT for Link UY2. Anywhere else, the amount of infrastructure coupled with the complexity of the operations and mineral estate rights held by Occidental would no doubt lead to cost increases and delays.	Statement based on Mr. Payton's personal knowledge of the field infrastructure and operations, his personal experience, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).
p. 12, lines 7-9	Attempting to undertake two major construction programs at the same time... would be problematic.	Statement based on Occidental's corporate position, Mr. Payton's personal knowledge of the Dora Roberts field project, his personal experiences in and around construction projects, and common sense ( <i>i.e.</i> , problems associated with heavy machinery and workers from simultaneous construction projects in a limited area).
p. 13, lines 21-23	Any 345-kV transmission structures should be located such that if they toppled, they would not puncture any pipeline. This is especially important given the nature of these pipelines.	Statement based on Mr. Payton's personal knowledge regarding the location and hazardous contents of pipelines, his personal experience, and common sense ( <i>i.e.</i> , pipelines with hazardous materials should not be punctured).

Page, Line	Portion of Testimony Objected to	Response to Objection
p. 14, lines 4-5	It is Occidental's position that WETT would not be permitted to use any of these roads for construction or maintenance of the proposed transmission line.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
p. 15, lines 1-2	Occidental would not allow any of these distribution lines to be removed from service...on the proposed transmission line.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
p. 15, lines 22-24	Attempting to undertake two major construction programs at the same time...would be problematic.	Statement based on Occidental's corporate position, Mr. Payton's personal knowledge of the Dora Roberts field project, his personal experiences in and around construction projects, and common sense ( <i>i.e.</i> , problems associated with heavy machinery and workers from simultaneous construction projects in a limited area).
p. 16, lines 1-2	No. WETT would be required to adjust...to avoid interfering with Dora Robert's construction activities.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
p. 16, lines 27-28 and p. 17 lines 1	It would be problematic to route a transmission line through Dora Roberts. The amount of infrastructure coupled with the complexity of the operations will no doubt lead to cost increases and delays.	Statement based on Occidental's corporate position, Mr. Payton's personal knowledge of the Dora Roberts field project, his personal experiences, and common sense ( <i>i.e.</i> , more inference where there is more existing infrastructure; problems associated with heavy machinery and workers from simultaneous construction projects in a limited area).
p. 18, lines 1-3	Attempting to undertake two major construction programs at the same time...would be problematic.	Statement based on Occidental's corporate position, Mr. Payton's personal knowledge of the Dora Roberts field project, his personal experiences in and around construction projects, and common sense ( <i>i.e.</i> , problems associated with heavy machinery and workers from simultaneous construction projects in a limited area).

Page, Line	Portion of Testimony Objected to	Response to Objection
p. 18, lines 10-11	Occidental would expect WETT to adjust its plans so as to avoid any new South Curtis infrastructure and to avoid interfering with ongoing South Curtis development activities.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
p. 18, lines 19-21	Given these impacts, it is Occidental's position that WETT would be subject to significant delays and increased costs if it were to attempt to utilize these links.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge.
<b>Hearsay – WETT Objection at pp. 14-15</b>		
p. 10, line 9-14 & 16-17.	Occidental's position is that the surface owner does not have the legal right to grant an easement to WETT for any of these links... This position holds regardless of whether the easement were to be voluntarily granted or involuntarily taken through condemnation. Occidental's Statement of Position filed in this case contains a more detailed explanation of Occidental's position with regard to this subject ... No. I am testifying that it is Occidental's position and that Occidental will actively defend and pursue that position.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge. Corporate representatives are allowed to rely on corporate statements and positions as personal knowledge, and testimony based on such statements is not hearsay.
p. 14, lines 4-5	It is Occidental's position that WETT would not be permitted to use any of these roads for construction or maintenance of the proposed transmission line.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge. Corporate representatives are allowed to rely on corporate statements and positions as personal knowledge, and testimony based on such statements is not hearsay.

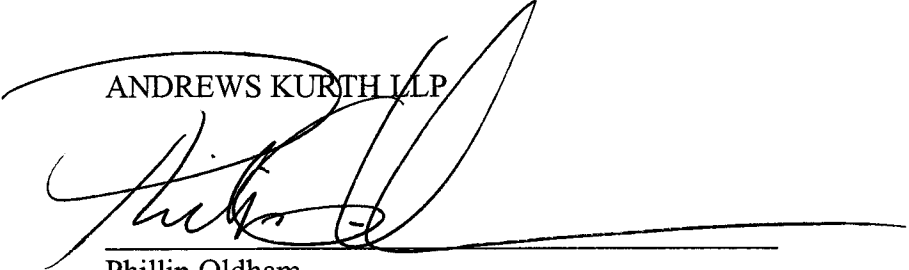
Page, Line	Portion of Testimony Objected to	Response to Objection
p. 15, lines 1-2	Occidental would not allow any of these distribution lines to be removed from service...on the proposed transmission line.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge. Corporate representatives are allowed to rely on corporate statements and positions as personal knowledge, and testimony based on such statements is not hearsay.
p. 18, lines 10-11	Occidental would expect WETT to adjust its plans so as to avoid any new South Curtis infrastructure and to avoid interfering with ongoing South Curtis development activities.	Statement of Occidental's corporate position based on Mr. Payton's personal knowledge. Corporate representatives are allowed to rely on corporate statements and positions as personal knowledge, and testimony based on such statements is not hearsay.
<b>Speculation – WETT Objection at pp. 21-22</b>		
p. 7, lines 27-28 and p. 8, lines 1-2	If shifted elsewhere to cross Sharon Ridge, there would almost certainly be much more pipeline and electric distribution infrastructure interference, well spacing problems and construction coordination issues. These issues have been discussed earlier in this section.	Not speculation; statement based on Mr. Payton's personal knowledge of the field infrastructure and operations, his personal experiences, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).
p. 8, lines 14-17.	However, if the placement of Link UY2 were shifted out of the narrow strip between CR 1610 and the existing Oncor 138-kV transmission line, then there will be additional well interferences and many additional road, pipeline and electric distribution interferences.	Not speculation; statement based on Mr. Payton's personal knowledge of the field infrastructure and operations, his personal experiences, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).
p. 14, lines 9-17	This would directly interfere...since that system was not built with the expectation that there would ever be roads in those locations.	Not speculation; statement based on Mr. Payton's personal knowledge of the field infrastructure and operations, his personal experiences, and common sense ( <i>i.e.</i> , more interference where there is more existing infrastructure).

#### IV. CONCLUSION

All of Mr. Payton's testimony is permissible under well-established law and should be admitted in order to provide the Commission with the relevant and highly crucial information needed to make a fully informed decision in this docket. Mr. Payton's testimony consists only of statements of fact and statements of opinion that constitute permissible lay opinion testimony under the Texas Rules of Evidence. As a corporate representative, Mr. Payton's testimony regarding Occidental's positions does not constitute hearsay. Mr. Payton's statements regarding the effects of moving the proposed transmission line to other locations on Occidental's fields are not speculation but are instead based on Mr. Payton's personal knowledge and experiences and the information provided by WETT in its application. Based on the foregoing, WETT's objections and motion to strike should be denied.

Respectfully submitted,

ANDREWS KURTH LLP




Phillip Oldham  
State Bar No. 00794392  
Tammy Cooper  
State Bar No. 00796401  
Katherine Coleman  
State Bar No. 24059596  
111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
(512) 320-9200  
(512) 320-9292 FAX

ATTORNEYS FOR OCCIDENTAL

**CERTIFICATE OF SERVICE**

I, Katherine Coleman, Attorney for Occidental hereby certify that a copy of this document was served on all parties of record in this proceeding on this 5th day of November, 2010 by electronic mail, facsimile and/or First Class, U.S. Mail, Postage Prepaid.

  
\_\_\_\_\_

Katherine Coleman