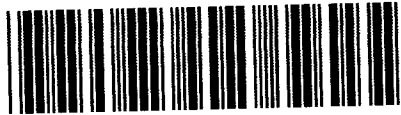




Control Number: 38825



Item Number: 374

Addendum StartPage: 0

APPLICATION OF WIND ENERGY §
TRANSMISSION TEXAS, LLC TO AMEND §
ITS CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR THE PROPOSED §
LONG DRAW TO SAND BLUFF, SAND BLUFF §
TO DIVIDE, AND SAND BLUFF TO BEARKAT §
345 KV CREZ TRANSMISSION LINES IN §
BORDEN, COKE, GLASSCOCK, HOWARD, §
MITCHELL & STERLING COUNTIES §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

FILED
FEB 11 AM 10:37
FILING CLERK

**RESPONSE BY THE DRIVER FAMILY, ESTATE
OF ALMA M. DRIVER, SKIPPER DRIVER, EXECUTOR,
ESTATE OF E. P. DRIVER, SKIPPER DRIVER, EXECUTOR, AND
WILLIAM DRIVER TO WIND ENERGY TRANSMISSION TEXAS, LLC'S
OBJECTIONS TO INTERVENOR TESTIMONY**

COMES NOW the Driver Family, Estate of Alma M. Driver, Skipper Driver, Executor, Estate of E. P. Driver, Skipper Driver, Executor, and William Driver and files this, their Response to Wind Energy Transmission Texas, LLC's Objections to Intervenor Prefiled Direct Testimony of Skipper and Dane Driver. This response is timely filed.

I. Objection to Skipper Driver's Direct Testimony

WETT objects to Skipper Driver's testimony, found on Page 13, lines 12-13 that "placing a larger line with more energy along the same route will increase that fire hazard and place my family in further danger," the basis of said objection being "unqualified expert opinion" under Texas Rules of Evidence 602, 701, and 702, and speculative under TRE 602 and 701. This objection should be overruled because Skipper Driver's testimony about the fire hazard that exists on his property due to existing power lines is based on his personal knowledge, thus satisfying Rule 602. In addition, no expert testimony has been proffered through Skipper Driver, and any opinion that may be contained in the excerpt about which WETT complains is "rationally based on the perception of the witness" and is helpful to a clear understanding of his testimony under Rule 701. As his testimony makes clear, Skipper Driver has witnessed multiple fires on his property, each attributable to the 138 kV transmission lines that cross his property. Skipper Driver is qualified under Rule 701 to provide an opinion or inference about these fires, the power lines that caused them, and the inference that larger power lines would exacerbate the problem. This objection should be overruled.

II. Objections to Dane Driver's Direct Testimony

A. Page 12, Lines 8-19, "placing a larger line with more energy along the same route will increase that fire hazard and place my family in further danger."

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WETT objects to this testimony on the basis that it is “unqualified expert opinion” under Texas Rules of Evidence 602, 701, and 702, and speculative under TRE 602 and 701. This objection should be overruled because Dane Driver’s testimony about the fire hazard that exists on his property due to existing power lines is based on his personal knowledge, thus satisfying Rule 602. In addition, no expert testimony has been proffered through Dane Driver, and any opinion that may be contained in the excerpt about which WETT complains is “rationally based on the perception of the witness” and is helpful to a clear understanding of his testimony under Rule 701. As his testimony makes clear, Dane Driver has witnessed multiple fires on his property, each attributable to the 138 kV transmission lines that cross his property. Dane Driver is qualified under Rule 701 to provide an opinion or inference about these fires, the power lines that caused them, and the inference that larger power lines would exacerbate the problem. This objection should be overruled.

B. Page 13, Lines 5-11, “The increased height of the proposed line and towers would make navigating a helicopter over our property extremely hazardous. The inability to use a helicopter would make the ranch as a whole much more difficult to manage, and would have a negative effect on the members of the Driver Family and our employees who rely on the ranch to earn a living. A 345 kV line on our property would also prevent us from utilizing aerial pest management, should the necessity to use it arise.”

WETT objects to this testimony on the basis that it is “unqualified expert opinion” under TRE 602, 701 and 702 and “speculation” under TRE 602 and 701. Dane’s testimony about the use of aerial resources to manage the ranch property is not an expert opinion, nor is it speculative. Dane Driver has been involved in the ranching business for his entire life, and has personal experience in the use of aerial measures for herd management and brush and pest control. This evidence is relevant and admissible under TRE 401 and 402, and to the extent any of the testimony can be perceived as offering an opinion, Dane’s training and experience through his lifetime of cattle ranching provides him the basis for offering his opinion and inferences “rationally based on [his] perception,” and is helpful to a clear understanding of his testimony. TRE 701.

Also, Dane’s testimony does not require expert witness testimony. “Expert testimony is required when an issue involves matters beyond jurors’ common understanding.” *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 583 (Tex. 2006). The testimony that WETT objects to is not beyond the common understanding of a layperson. It is common sense that flying an aircraft close to a power line is hazardous, and common sense also dictates that adding additional power lines to an area increases the risk to those pilots whose job it is to fly near them. Thus, no expert witness testimony is required to present Dane’s proffered testimony, and because his testimony is neither speculative nor an unqualified expert opinion, this objection should be overruled.

C. Page 13, Line 19 to Page 14, Line 10, Entirety of Selection.

WETT objects to this portion of Dane’s testimony on the grounds that it is “unqualified expert opinion” under TRE 602, 701, and 702, and “speculation” under TRE 602 and 701. However, the question Dane answered in this section was, “If the transmission line is built on the

property, do you have any concerns about WETT having access to your property?" This question does not call for opinion testimony, expert or lay witness, nor does it call for speculation. Thus, everything contained in this answer is not an opinion at all, let alone an expert opinion. Dane's answer is limited to expressing his concerns about allowing WETT access to the land. In addition, this testimony is by no means "speculative at best." Dane's testimony was about what his concerns are, not what his concerns could be.

In addition, the section of the testimony listed in WETT's objection, "[t]he witness is not qualified as an expert to opine whether the surface lines will need to be removed as a result of construction and operating a transmission line on the property," again misconstrues the testimony. The entirety of Dane's testimony about moving the surface lines is: "If we are forced to remove the lines in order to prevent this type of damage, this will likewise result in a loss of revenue because it is more expensive and less efficient to move the oil by truck." Dane does not provide any opinion that the surface lines need to be removed, nor does he speculate that this will be done. The objections are unfounded.

Finally, WETT's concerns about this testimony are best addressed through cross-examination, not exclusion. WETT attempts to justify its objections by providing its own speculative facts about how the property will be gated and how WETT's intrusion on the Driver Family property will compare to oil and gas operators. There is no legal basis for the exclusion of Dane's testimony, and if WETT takes exception to his concerns, they should cross-examine him. These objections should be overruled.

D. Page 14, Line 18 through Page 15, Line 3, Entirety.

WETT objects to this excerpt of Dane's testimony on the basis that it is "unqualified expert opinion" under TRE 602, 701, and 702, and "speculation" under TRE 602 and 701. The fact that "farming, ranching, and oil and gas production are the backbone of the Glasscock County community" is neither speculative nor an opinion requiring expert testimony. The potential economic impact on the Driver Family ranch, not including devaluation of the land itself, is not speculative nor does it require an expert opinion. Dane Driver knows how much money his family and the family business spend within the Glasscock County community, and his testimony about what impact his family has on the community is his own personal knowledge. In addition, to the extent any of the testimony at issue expresses an opinion, Dane Driver is in the position to offer such opinion based on his extensive knowledge and experience related to the ranching and oil and gas industries both on his family property as well as in Glasscock Community as a whole. His opinions or inferences are rationally based on his perceptions over time and are helpful to a clear understanding of his testimony, and are thus admissible under TRE 701. This objection should be overruled.

Conclusion and Prayer

WHEREFORE, the Driver Family respectfully requests that Wind Energy Transmission Texas, LLC's foregoing objections to the Direct Testimony of Skipper and Dane Driver be overruled.

Respectfully submitted,

**STUBBEMAN, McRAE, SEALY,
LAUGHLIN & BROWDER, INC.**

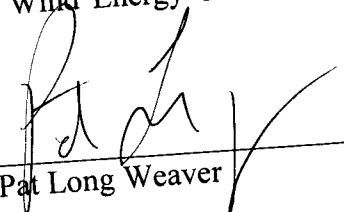
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**ATTORNEYS FOR THE DRIVER FAMILY,
ESTATE OF ALMA M. DRIVER, SKIPPER
DRIVER, EXECUTOR, ESTATE OF E. P.
DRIVER, SKIPPER DRIVER, EXECUTOR,
AND WILLIAM DRIVER**

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2011, a true and correct copy of the foregoing Response of the Driver Family, Estate of Alma M. Driver, Skipper Driver, Executor, Estate of E. P. Driver, Skipper Driver, Executor, and William Driver to Wind Energy Transmission Texas, LLC's Objections to Intervenor Testimony of Skipper and Dane Driver, was sent for filing with the Commission and a copy has been sent by Federal Express to Wind Energy Transmission Texas, LLC.


Pat Long Weaver