

Control Number: 38825



Item Number: 379

Addendum StartPage: 0

Partnership witness Mr. Jordan Partee testified that he has found numerous historical and archaeological artifacts throughout the property in proximity to Signal Peak and the Twin Mountains, including the area in close proximity to proposed link DH5. Signal Peak is also a well-known landmark associated with Big Spring and Howard County.

II. RESPONSE TO WETT'S OBJECTIONS

Tex. R. Civ. Proc. 401 provides that "relevant evidence" includes "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." WETT objected to the entire section of Ms. Schrecengost's testimony discussing Signal Peak, two exhibits that include photographs of Signal Peak, and all references to Signal Peak in other portions of her testimony. In support of its objection, WETT simply notes that Signal Peak is approximately two miles from link DH5. WETT's objection is meritless and should be overruled. Features of historic and aesthetic value on the Garrett Ranch—including Signal Peak and the surrounding area—are indisputably relevant in determining the best location for the proposed transmission line.

The transmission line proposed by WETT does not have to cross directly over Signal Peak in order to have an adverse impact on this historic landmark, and information about Signal Peak is clearly relevant to the routing decision that will be made in this case. PURA § 37.056(C)(4)(C) explicitly directs the Commission to consider historical and aesthetic values. It is precisely these values that Ms. Schrecengost addresses, testifying that Signal Peak is one of the most recognizable and historically significant features of Big Spring, Texas.² It is highly relevant that massive 150-180 foot-tall lattice towers³ would be placed approximately 10,000 feet from this historically significant landmark if link DH5 is constructed.

Further, the history of Signal Peak and the Twin Mountains is not just important in assessing the impact to the peak and mountains themselves, but is also necessary to appreciate the impact the line may have on surrounding areas of the Garrett Ranch. The Native Americans that once used Signal Peak and the Twins Mountains for various purposes clearly did not confine themselves to these geographic features, but would also have occupied other nearby areas on the Garrett Ranch. As Mr. Partee testified, he has found numerous artifacts such as stone-working

² Direct Testimony of Tammy Burrow Schrecengost at 7 (Jan. 25, 2011).

³ Long Draw-Sand Bluff EA at Figure 1-2.

tools, cave paintings, and burned rock middens in the area around Signal Peak and the Twin Mountains—some in very close proximity to the proposed location of link DH5.⁴ The history of Signal Peak is crucial to understanding the historical and archaeological significance of the areas surrounding the peak on the Garrett Ranch.

Signal Peak is also inextricably linked with the history of Mrs. Dora Roberts, a “central figure in the history of Big Spring, Howard County, and West Texas”⁵ The property on which Signal Peak is located became a part of the contiguous property of the Garrett Ranch upon Mrs. Roberts’ marriage to John Roberts.⁶ One of the exhibits that WETT seeks to strike from Ms. Schrecengost’s testimony is a photograph of the Roberts family—the direct ancestors of Mr. Partee and his family—in front of Signal Peak on the Garrett Ranch more than 100 years ago.⁷ WETT also seeks to strike all “references” to Signal Peak, which are found throughout Mrs. Schrecengost’s testimony on Dora Roberts. WETT has not disputed that Mrs. Roberts’ historic legacy and the role that the Garrett Ranch played in her story are relevant to this proceeding. Ms. Schrecengost’s testimony on the historic value of Signal Peak is relevant to choosing the best location for the proposed line, and WETT’s request to strike her testimony should be denied.

Moreover, the impact to similar landmarks that were comparable distances from proposed links has been considered and given significant weight in other routing decisions. For example, in Docket No. 38354, the Texas Historical Commission (THC) submitted testimony opposing various links that were between 1.2 and 3 miles from different points within Fort McKavett.⁸ In their proposal for decision, the ALJs recommended against selecting a route that would use the links in proximity to Fort McKavett, stating “the ALJs agree with the THC that the line would have a negative impact on Fort McKavett’s historic character, the Fort’s view shed, and the aesthetic values associated with its preservation and isolation.”⁹ The historic character, preservation, and isolation of Signal Peak Mountain and the Twin Mountains are of similar importance, and will be equally impacted by proposed link DH5. Similarly, in Docket No. 37448, the Friends of Enchanted Rock State Natural Area opposed links that were between 2.1

⁴ Direct Testimony of Jordan Partee at 5-6 (Jan. 25, 2011).

⁵ Direct Testimony of Tammy Burrow Schrecengost at 5 (Jan. 25, 2011).

⁶ *Id.* at 7.

⁷ *Id.* at Exhibit TBS-4.

⁸ Docket No. 38354, Direct Testimony of Michael A. Garza at 9-10 (Sep. 28, 2010).

⁹ Docket No. 38354, Proposal for Decision at 29 (Dec. 16, 2010).

and 2.8 miles away from the main dome of Enchanted Rock.¹⁰ The ALJs considered the impact to Enchanted Rock, and ultimately recommended “Route GN6 [which] uses links that are the farthest links from Enchanted Rock.”¹¹ These examples make clear that proposed links can have an adverse impact on landmarks that should be avoided, even if the line will not directly cross the landmark.

Without Ms. Schrecengost’s testimony in the record, the ALJs, the Commission, and other parties will not have a complete picture of the historical and archaeological significance of Signal Peak, the Garrett Ranch as a whole, and the potential adverse impact of link DH5. Ms. Schrecengost’s testimony should be admitted in its entirety. WETT’s arguments about the distance between the proposed line and Signal Peak Mountain can be considered in determining how to weigh this evidence—not its relevance.

III. CONCLUSION

The Garrett Family Partnership respectfully requests that the ALJs overrule WETT’s objections to Ms. Schrecengost’s testimony. As set forth above, this testimony is clearly relevant and should be admitted in its entirety. The Garrett Family Partnership also requests any other relief to which it is entitled.

¹⁰ Docket No. 37448, Friends of Enchanted Rock State Natural Area, Statement of Position at 1 (Jan. 7, 2010).

¹¹ Docket No. 37448, Proposal for Decision at 62, FoF 33 (Mar. 18, 2010).

Respectfully submitted,

ANDREWS KURTH LLP

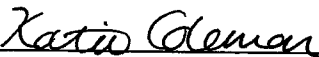


Lino Mendiola
State Bar No. 00791248
Tammy Cooper
State Bar No. 00796401
Katherine Coleman
State Bar No. 24059596
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9200
(512) 320-9292 (fax)

ATTORNEYS FOR GARRETT
FAMILY PARTNERSHIP

CERTIFICATE OF SERVICE

I, Katherine Coleman, Attorney for Garrett Family Partnership, hereby certify that a copy of this document was served on Wind Energy Transmission Texas, LLC on this 11th day of February, 2011, in accordance with Order No. 1.



Katherine Coleman