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APPLICATION OF LCRA §
TRANSMISSION SERVICES § BEFORE THE STATE OFFICE
CORPORATION TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE PRO- §
POSED EC MORNHINWEG TO § ADMINISTRATIVE HEARINGS
PARKWAY 138-KV TRANSMISSION §
LINE IN COMAL AND GUADALUPE
COUNTIES

**LCRA TSC'S RESPONSE TO PETER MAUPIN'S
OBJECTIONS TO APPLICANT'S DIRECT TESTIMONY AND
MOTION TO DISALLOW SAID TESTIMONY OR PORTIONS THEREOF**

LCRA Transmission Services Corporation ("LCRA TSC") hereby files this Response to Peter Maupin's Objections to Applicant's Direct Testimony and Motion to Disallow Said Testimony or Portions Thereof (LCRA TSC Response), and in support thereof would respectfully show the following:

I. LCRA TSC Response Is Timely Filed

Peter Maupin (Mr. Maupin), an intervenor in this docket, filed his Objections to Applicant's Direct Testimony and Motion to Disallow Said Testimony or Portions Thereof (Maupin Motion to Strike) on December 14, 2012. Pursuant to SOAH Order No. 2, LCRA TSC's Response is due by December 20, 2012. Therefore, LCRA TSC's Response is timely filed.

II. Summary of Argument

Mr. Maupin's Motion to Strike is essentially composed of three parts: in the first part he requests that the Direct Testimony of LCRA TSC witness Dr. Edward Gelmann be stricken; in the second part he requests that the Direct Testimony of LCRA TSC witness Mr. Michael Silva be stricken; and in the third part he requests that LCRA TSC be directed to file future testimony that is, in his words, "...complete and unbiased..." Mr. Maupin's Motion to Strike is not well founded and should be denied in all respects. Not only does Mr. Maupin's Motion to Strike fail to state any appropriate legal bases on which relief can be granted, but his Motion to Strike is essentially grounded on the notion that he does not like particular aspects of Dr. Gelmann's and

Mr. Silva's Direct Testimonies because they are prejudicial to his position, whatever that may be. As explained in more detail below, disagreements with factual or expert conclusions of expert witnesses are not sufficient reasons on which to base a motion to strike. Furthermore, Mr. Maupin's third request that the ALJs instruct LCRA TSC to file future testimony in some particular form and/or format acceptable to Mr. Maupin is simply a fundamental misunderstanding of the nature of this proceeding and should be denied on that ground alone. Again, LCRA TSC will discuss this issue in more detail below

III. Summary of Argument Regarding Dr. Gelmann and Mr. Silva

The testimony and expert opinions of both Dr. Gelmann and Mr. Silva have been admitted into evidence in numerous Commission proceedings, and have formed the basis of Commission findings in several recent LCRA TSC transmission line cases, including during the thorough consideration of transmission issues represented by the recent CREZ proceedings.¹

Mr. Maupin does not present any valid argument on legal or other grounds as to why either Dr. Gelmann's or Mr. Silva's Direct Testimonies should be stricken other than he disagrees with their expert conclusions. In his testimony Dr. Gelmann explains his qualifications as a medical doctor and cancer research scientist, the nature of the scientific research he examined, the details of those studies and their results, the limitations of data from other bodies of evidence, and the conclusions of major publicly funded reviews of scientific evidence, and then provides his independent expert conclusions based on training, experience, and evaluation of the scientific evidence.

In his testimony Mr. Silva explains his qualifications as a licensed professional electrical engineer and an expert in power frequency electric and/or magnetic field (EMF) exposures and assessment, the methods he has used to evaluate a range of EMF exposure issues for numerous public and private entities in a variety of settings, the EMF levels commonly found in everyday settings, and his measurements of EMF in public locations in the community of Schertz itself, and then he provides his independent expert conclusions about the anticipated EMF from this transmission line. In both instances these explanations are more than sufficient to meet the requirements of expert testimony under Texas law.² Mr. Maupin will have the opportunity to ex-

¹ See, for example, PUC Docket No. 38354, SOAH Docket No. 473-10-5546, LCRA TSC's McCamey D to Kendall 345-kV CREZ Transmission Line Project, Order at 19 (January 24, 2011).

² See, e.g. *Transcontinental Insurance Co. v. Crump*, 330 S. W. 3d 211, 219-220 (Texas 2010).

amine differences of opinion or alleged factual concerns with these witnesses by filing the testimony of his own expert witness(es) or through cross-examination at hearing.

IV. More Detailed Response Concerning Dr. Gelmann

As pointed out in the qualifications section of his Direct Testimony, Dr. Gelmann is a medical doctor who specializes in the care and treatment of cancer patients, and research on the molecular and genetic basis for cancer development. He has treated cancer patients and conducted cancer research for over 32 years. He is Chief of Hematology/Oncology at the Columbia University Medical Center in New York and is the Deputy Director of the Herbert Irving Comprehensive Cancer Center. In addition to his work with cancer patients and his research on cancer development, Dr. Gelmann teaches medicine at Columbia. He has previously run a cancer research laboratory at the U.S. National Cancer Institute and directed patient care and cancer research at the Vince Lombardi Cancer Center at Georgetown University Medical School.

Dr. Gelmann has authored over 180 scientific papers, principally on cancer, as well as chapters on cancer in medical and science textbooks. He is a member of the American Association for Cancer Research, the American Society of Clinical Investigation, the American Society of Clinical Oncology, the American College of Physicians, and other professional groups. He has served as a liaison between the American Society of Clinical Oncology and the National Cancer Advisory Board, which is a committee of scientists, physicians, and lay people appointed by the President of the United States to oversee cancer research in the United States. In every respect, Dr. Gelmann is professionally qualified to present his expert opinions on the matters covered in his Direct Testimony, and he has done so in any number of Commission proceedings on behalf of LCRA TSC.

In this proceeding, Dr. Gelmann's Direct Testimony addresses his independent evaluation of scientific research on EMF in his areas of expertise. As described more fully in his Direct Testimony, Dr. Gelmann's evaluation of the scientific literature focuses on the numerous laboratory studies on EMF that are relevant to the development of cancer. These include studies on EMF and DNA or chromosomes in cells (*including human blood cells*), which examine whether EMF can cause the molecular changes required to cause a normal cell to become a cancer cell. Dr. Gelmann also evaluated studies that examined cancer development in laboratory animals ex-

posed to EMF. These included studies that examined whether EMF exposures affected cancer causation, cancer promotion, or cancer progression (tumor growth) in animals.

The animal research described in his Direct Testimony includes studies conducted by the U.S. National Toxicology Program (NTP) using the standard NTP protocols for animal research. The NTP is a branch of the U.S. Department of Health and Human Services and is the principal agency responsible for toxicology research conducted by the federal government. This type of laboratory research on animals is well-recognized as an important part of the scientific evaluation of whether an agent is toxic or likely to cause cancer *in humans*; a point Mr. Maupin seems to have completely overlooked or misunderstood. As Dr. Gelmann explains in his Direct Testimony, the NTP has noted that “two-year studies in laboratory rodents remain the primary method by which test articles are identified as having the potential to be hazardous to humans.”³ Based on his expert review of the many scientific studies conducted in his areas of expertise, Dr. Gelmann finds there is no reliable scientific basis to conclude that power frequency EMF cause or contribute to the development of cancer. Given his areas of expertise, his professional experience, and his assessment of the studies and data, Dr. Gelmann is entitled to make this expert conclusion in his Direct Testimony and Mr. Maupin’s simple disagreement with that conclusion, without more, is not a sufficient basis on which to strike Dr. Gelmann’s testimony.

Indeed, Mr. Maupin has moved to exclude Dr. Gelmann’s testimony based on the mistaken allegation that it “is biased and incomplete as he does not mention any human studies.”⁴ This argument is without merit. While he is not an epidemiologist, Dr. Gelmann does acknowledge this research. He notes that, “I am also aware that a number of epidemiology studies have sought to determine whether there are any apparent statistical associations between EMF and the incidence of disease in human populations.”⁵ As a medical doctor, cancer researcher, and geneticist, Dr. Gelmann is “generally familiar with epidemiology studies and examine[s] them in the course of [his] regular professional activities.”⁶ His testimony describes his understanding of this area of research and the role of epidemiology studies in generating hypotheses which can be tested through rigorously controlled laboratory studies on cells and animals.

³ Gelmann Direct Testimony at 10.

⁴ Maupin Motion to Strike at 1.

⁵ Gelmann Direct Testimony at 12.

⁶ *Id.*

Mr. Maupin also argues that Dr. Gelmann has not accurately described the findings presented in the 1999 report on EMF from the Director of the National Institute of Environmental Health Sciences (NIEHS). On the contrary, Dr. Gelmann's testimony accurately quotes the NIEHS conclusion that:

ELF-EMF exposure would not be listed in the "Report on Carcinogens" as an agent "reasonably anticipated to be a human carcinogen." This is based on the limited epidemiological evidence and the findings from the EMF-RAPID Program that did not indicate an effect of ELF-EMF exposure in experimental animals or a mechanistic basis for carcinogenicity. (emphasis added)

To the extent Mr. Maupin disagrees with this NIEHS finding, he will have the opportunity to present his evidence through his own expert witness or to examine Dr. Gelmann on cross examination at hearing. His interpretation of the NIEHS conclusions, however, does not provide any valid basis to exclude Dr. Gelmann's testimony.

V. More Detailed Response Concerning Mr. Silva

Mr. Silva is a licensed professional engineer in electrical engineering in Texas and seven other states. Like Dr. Gelmann, Mr. Silva has testified on behalf of LCRA TSC in a number of Commission proceedings in the past.⁷ His work specializes in a broad range of engineering issues related to EMF, including instrumentation, exposure assessment, transmission line design, the Global Positioning System, wireless technology, and electromagnetic compatibility.

Mr. Silva has a Bachelor of Science degree in Engineering from the University of Alabama and a Master of Science in Engineering from Auburn University. He has worked as a design and research engineer on electrical projects for over 40 years. Mr. Silva is President of ENERTECH, which is a scientific and engineering research and consulting firm he founded. ENERTECH develops and manufactures high quality instrumentation for accurate measurement of EMF and has conducted numerous EMF measurement programs around the world. For example, Mr. Silva and ENERTECH conducted the EMF exposure assessment and EMF evaluations for several major EMF studies with researchers at the U.S. National Institute of Environ-

⁷ Most recently Mr. Silva provided expert EMF testimony on LCRA TSC's behalf in PUC Docket No. 39479, SOAH Docket No. 473-12-0019, LCRA TSC's Cushman to Highway 123 138-kV Transmission Line Project in Guadalupe County. Mr. Silva also provided EMF testimony on LCRA TSC's behalf in Docket No. 38354, LCRA TSC's McCamey D to Kendall 345-kV CREZ Transmission Line Project. See, footnote 1, above.

mental Health Sciences (NIEHS), Johns Hopkins University, the University of North Carolina, the California Department of Health Services, and the U.S. National Cancer Institute. ENERTECH also develops computer software used throughout the world for calculating EMF levels, analyzing measurement data and modeling EMF and electrical environments.

ENERTECH has performed EMF exposure assessments and consulting work for electric utilities in the United States, Australia, and Canada, and for a wide variety of other clients, including the National Cancer Institute, the United Nations (Headquarters), Kaiser Permanente Hospitals, Walt Disney Company, the San Antonio Express- News, Davies Medical Center, the State of Nevada Regional Planning Agency, Los Angeles Unified School District (CA), school districts in other states, the City of Austin, Texas, the Montana Department of Environmental Quality, the Wisconsin Public Service Commission, and the United States Air Force, among others.

Continuing, Mr. Silva is a Senior Member of the Institute of Electrical and Electronics Engineers (IEEE). He has been the Secretary of the IEEE Power Engineering Society's Corona & Field Effects Subcommittee and a member of the IEEE Design and Environmental Considerations Working Group. He has served as a peer-reviewer of papers submitted for publication in scientific and engineering journals. Mr. Silva has been an invited guest lecturer at the Ohio State University Electrical Engineering Distinguished Lecture Series and at the University of Texas at the Power System Seminar Lecture Series and the Power Distribution Conference in Austin. In all respects, Mr. Silva is more than qualified to provide expert opinion on the subjects covered in his Direct Testimony.

Mr. Maupin argues that Mr. Silva's expert testimony should be excluded because Mr. Maupin believes Mr. Silva should have mentioned a particular fence line location across an access road from a playground area at the John Sippel Elementary School. Mr. Silva's testimony about the John Sippel Elementary School is based on his in-person observations of the property, aerial and ground level photographs, and the EMF calculations made by LCRA TSC witness Mr. Nathan Laughlin, among other factors. To the extent Mr. Maupin believes that EMF levels at different locations along the school fence line are important, he will have an opportunity to explore that with Mr. Silva or Mr. Laughlin at hearing. Mr. Maupin's beliefs regarding the relative importance of other locations and how he believes they should have been measured and/or considered, however, does not constitute a valid basis for excluding or otherwise limiting Mr. Sil-

va's expert testimony. Again, simply disagreeing with an expert witness or a portion of his testimony, when the expert witness in question is presumably adversarial to one's position, is not a legally valid reason on which to base a motion to strike.

VI. More Detailed Response Concerning Future Testimony

In his final point Mr. Maupin requests the ALJs to admonish LCRA TSC to present future testimony that is "complete and unbiased in order to protect the rights of the public."⁸ This point should be summarily rejected because it is based on a fundamentally mistaken premise regarding the specific nature of LCRA TSC's filing and the general nature of administrative law.

LCRA TSC spent months (actually, closer to two years) studying the project need, the study area, and proposed routes before it filed this case. Under the Commission's rules and the Public Utility Regulatory Act (PURA) LCRA TSC has the burden of proof on the CCN Application as a whole, and more specifically, on every route LCRA TSC has proposed. In LCRA TSC's view, it has proposed a CCN Application and routes that are in the public interest because they fulfill the project need while simultaneously complying with the routing criteria contained in PURA and the Commission's Substantive Rules.⁹

As far as LCRA TSC can discern from discussions with Mr. Maupin at the prehearing conference, the technical conference, and the settlement conference he has a disagreement with the propriety of LCRA TSC's Route 10 and any route that uses Segment S; fair enough as far as it goes. However, Mr. Maupin does not have a monopoly on the truth or what is in the "public interest" and his disagreement with the factual, legal, or regulatory bases of LCRA TSC's CCN Application or any route proposed therein, does not constitute a legally valid ground on which to strike testimony with which he does not agree. Indeed, while Mr. Maupin may take issue (factually or otherwise) with portions of LCRA TSC's witnesses' testimony, he does not speak for other parties who may agree with the very same testimony. In either instance, agreeing or disagreeing with testimony supplied by a CCN applicant is not a reason on which a motion to strike can be grounded or granted.

This is a contested case and an adversarial proceeding conducted under the Administrative Procedure Act, PURA, and the Commission's Procedural Rules. As such, there will be dis-

⁸ Maupin Motion to Strike at 2.

⁹ See, e.g., PURA §§ 37.051, 37.053, 37.054, 37.056 and 37.056; COMM. SUBST. R. § 25.101.

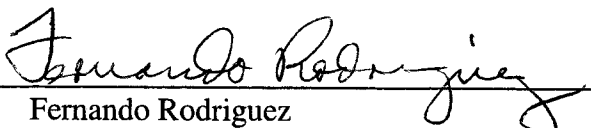
agreements among the parties as to facts, the law, and the weight to be given arguments on the merits. That is where Mr. Maupin's attention should be directed -- on the substance and the merits -- not on unsustainable arguments that seek to strike testimony and/or direct the preparation (in a certain manner) of future testimony of a party with whom he apparently has an adversarial relationship. As a result, Mr. Maupin's Motion to Strike should be denied.

WHEREFORE, PREMISES CONSIDERED, LCRA TSC requests that the ALJs consider the arguments contained above in LCRA TSC's Response, and that after such consideration, that Mr. Maupin's Motion to Strike be DENIED. LCRA TSC also requests any and all further relief to which it may show itself entitled.

Respectfully submitted,

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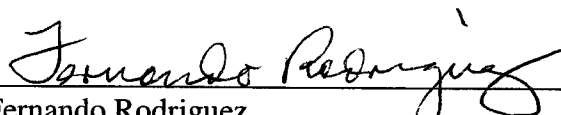
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ATTORNEYS FOR LCRA TRANSMISSION
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties pursuant to SOAH Order No. 2 on this 20th day of December, 2012, via the PUC Interchange as well as via U.S. Mail, First Class.



Fernando Rodriguez