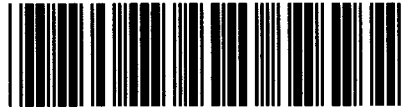




Control Number: 40684



Item Number: 370

Addendum StartPage: 0

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

**SOAH ORDER NO. 9  
RULING ON MOTIONS TO STRIKE TESTIMONY, CONFIRMING TIME OF  
HEARING; DEADLINE TO FILE INTENT TO CROSS-EXAMINE;  
AND HEARING PROCEDURES**

**I. VERIFICATION OF TIME OF HEARING**

The hearing will convene at **10:00 a.m., April 2, 2013**, on the Fourth Floor of the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas.<sup>1</sup> However, the court reporter will likely be in the hearing room as early as 9:15 a.m., to mark the exhibits and prepare for hearing. It is very beneficial for parties who will be participating in the hearing to arrive early in order to: (1) provide your name to the court reporter and (2) have exhibits pre-marked by the court reporter.

**II. DEADLINE TO REQUEST CROSS-EXAMINATION  
OF INTERVENOR WITNESS**

A large number of parties have filed testimony in this matter. In order to have such testimony admitted, the testifying witness will need to attend the hearing, unless no other party wishes to cross examine the witness. The Administrative Law Judges (ALJs) find it appropriate

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<sup>1</sup> Parking in this area is limited. Parking is available for a fee at the Bob Bullock Museum, located at 1800 Congress and the Capitol Visitors' Parking Garage, located at 1201 San Jacinto, several blocks away from the hearings site. All visitors will need to check in with the office building security desk in the lobby (it helps to have the SOAH docket number, found at the top of this Order).

to establish a deadline for parties to identify any intervenor witnesses they intend to cross-examine live at the hearing. Any intervenor witness who will not be cross-examined live at the hearing will have their direct testimony admitted at the hearing without the necessity of the witness being called to testify.

Therefore, any party that wishes to cross examine an intervenor witness shall identify, by April 1, 2013, all intervenor direct testimony witnesses whose presence at the hearing is necessary because they will be cross-examined. If a party does not intend to call intervenor witnesses for cross-examination, then the party need not file any pleading at all by this deadline.<sup>2</sup> Any party requesting the attendance of an intervenor witness must identify the reason the witness's attendance will be necessary (*i.e.*, the areas on which the party intends to cross-examine the witness). No filing is necessary regarding witnesses presented by applicant LCRA Transmission Services Corporation (LCRA TSC), as those witnesses will be expected to be in attendance at the hearing.

A person that filed testimony does not have to appear at the hearing if no one requested to cross-examine them. But that party must provide four copies (see below) of the testimony to the hearing room. *Any prefiled testimony from a waived witness that are not provided to the court reporter shall not be admitted and will be considered solely as statements of position.* A party sponsoring any waived witnesses' testimony need not appear at the hearing personally, but may work with other parties to ensure that four copies of waived witnesses' testimony get delivered to the court reporter as directed by this order. Please contact the Staff attorney, Ms. Shelah Cisneros at 512-936-7265 or Ms. Melissa Ethridge at 512-463-0203 if you have any questions about procedures.

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<sup>2</sup> Failure to identify a witness for cross-examination will not preclude a party from cross-examining any intervenor witness called for cross-examination by another party.

### III. NUMBER OF COPIES NEEDED FOR HEARING

At the hearing, any party submitting prefiled testimony needs to bring enough copies for the official record, the court reporter, and for appeals (the PUC collects two copies for cases that may be appealed to district court). This is a total of four copies. This also applies to any party submitting testimony from a waived witness (as set out above). A party sponsoring any waived witnesses' testimony need not appear at the hearing personally, but may work with other parties to ensure that the requisite copies of waived witnesses' testimony get delivered to the court reporter as directed by this order.

For witnesses whose presence is still required at the hearing (non-waived witnesses), the party sponsoring them does not have to provide copies of their prefiled testimony to all other parties. Rather, as long as the testimony has been properly prefiled and is on the PUC Interchange, the sponsoring party need only bring four copies of the testimony to the hearing—two for the court reporter and two for the appeals box.

For any other evidence that a party wishes to submit into the record, which has not been prefiled, a party shall bring at least 10 copies to provide to the court reporter, the ALJs, and to other parties.

### IV. MOTIONS TO STRIKE TESTIMONY

On February 11, 2013, LCRA TSC filed objections to and moved to strike portions of the prefiled direct testimony of Bob Luhrs, Sharlene Fey, Patricia R. Dodd, Jopseph Tudyk, Ernest Jasek, Elgin Ott, Joyce Marbach Jones, David and Gail Caven, Dr. Gray Gibson, Joanne Harden, Peter Maupin, Charles Forbes, Joseph Gonzales, and Marc J. Friesenhahn. On March 7, 2013, LCRA TSC filed objections to the prefiled rebuttal testimony of Peter Maupin and Joanne Harden. Intervenors Patricia R. Dodd and Joanne Harden (Mortellaro's Nursery) filed responses stating that they have reached an agreement with LCRA TSC to strike the portions of the testimony to which LCRA TSC objected. Therefore, the ALJs will not rule on

LCRA TSC's objections to these intervenors' testimony. In regard to the testimony of the remaining intervenors, LCRA TSC's objections are primarily categorized into three broad areas: 1) electro-magnetic field (EMF) claims or concerns; 2) testimony concerning the effect of the proposed route on property value, and 3) testimony regarding the effect of the proposed route on future uses of the property.

**A. EMF Claim/Concerns**

Unless such testimony is specifically found to be relevant or offered by an expert, the ALJs will only regard it as a legitimate statement of concern by intervenors, but not as evidence upon which to base a recommendation to the PUC regarding placement of the line. Subject to this caveat, intervenor testimony on these topics will not be struck from the record, but rather will be considered under the category of community values. Documents referencing research or opinions on EMF attached to the testimony of intervenors, of which the intervenors are not the authors, will not be considered as evidence but may be used to cross-examine expert witnesses.


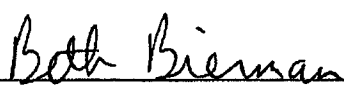
**B. Property Valuation**

Generally, the effect of the proposed route on the value of the adjoining property is not an issue to be considered by the ALJs in this hearing, according to the order of referral. The testimony will not be considered as evidence on which to base a recommendation to the PUC on where to place the proposed line. To the extent the testimony reflects community values or aesthetic considerations, it will be considered relevant. The ALJs will determine the proper weight to be given the testimony and it will not be struck from the record.

**C. Future Use**

Testimony regarding future use of the property will be considered relevant to the community values consideration. The ALJs will determine the weight to be given such testimony and it will not be struck from the record.

SIGNED March 26, 2013.

  
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JOANNE SUMMERHAYS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
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BETH BIERMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS