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SOAH DOCKET NO. 473-13-5207
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JOINT APPLICATION OF ELECTRIC
TRANSMISSION TEXAS, LLC AND
SHARYLAND UTILITIES, L.P. TO
AMEND THEIR CERTIFICATES OF
CONVENIENCE AND NECESSITY
FOR THE PROPOSED NORTH
EDINBURG TO LOMA ALTA
DOUBLE-CIRCUIT 345 KV
TRANSMISSION LINE IN HIDALGO
AND CAMERON COUNTIES, TEXAS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**JOINT APPLICANTS' OBJECTIONS TO FORTCO PROPERTIES, LTD. ET AL.'S
FIRST SET OF REQUESTS FOR INFORMATION TO JOINT APPLICANTS**

Joint Applicants file this objection to Fortco Properties, Ltd., Rio Fresh, Juan Lino Garza, and Garza Family Living Trust's (Fortco) First Set of Requests for Information (RFI) to Joint Applicants.

I. PROCEDURAL HISTORY

Joint Applicants received Fortco's First RFI on September 6, 2013. Pursuant to SOAH Order No. 3, Joint Applicants objections to these RFIs are timely filed on or before September 13, 2013.

II. NEGOTIATIONS

Counsel for Joint Applicants and Fortco have conferred in an effort to resolve potential discovery disputes. Although the parties have negotiated diligently and in good faith and will continue to discuss this discovery dispute, as of today, a mutually agreeable resolution has not yet been reached. Therefore, Joint Applicants have filed these objections.

III. SPECIFIC OBJECTION

Joint Applicants object to the following RFI as not relevant to any issue in this proceeding nor reasonably likely to lead to any admissible evidence, unduly burdensome and expensive, and contrary to sound public policy:

FORTCO RFI NO. 1-14

Please produce all drafts of the Environmental Assessment and Alternative Route Analysis for this project.

Objection:

Joint Applicants object to this RFI on three grounds.

The production of drafts is not relevant to any issue in this proceeding nor reasonably likely to lead to any admissible evidence. Draft documents are by definition tentative and subject to revision, and therefore lack any evidentiary weight in a proceeding of this sort. Additionally, any variations between the draft and final version of a document demonstrate nothing more than that the document was unfinished at the time.

The production of this information would be unduly burdensome and result in unnecessary expense. “ALJs and the Commission are authorized to modify discovery to avoid discovery that is unreasonable and unwarranted,” including prohibiting the production of drafts.¹ Preparing a CCN application for a transmission project like the one proposed in this proceeding will typically involve dozens of people over the course of several months (to more than a year), and require numerous studies, meetings, and evaluations to finalize. The final environmental assessment included with the CCN application filed in this proceeding contains over 1,600 pages (including attachments), and it took over fifteen months to conduct the assessment and complete the report that has been filed. The amount of expense and effort entailed in producing drafts is not justified, and the request is unreasonable and unwarranted under P.U.C. PROC. R. 22.142.

The production of drafts would result in administrative and judicial inefficiency and be contrary to sound public policy. In a recent ruling prohibiting the discovery of drafts of expert testimony, Judge Wilfong noted that “to allow discovery of prior drafts of prefiled testimony would start a slide down a slippery slope resulting in all parties feeling the need to seek discovery of the draft testimony of other parties to avoid tactical disadvantage, discovery disputes over whether a party preserved all prior drafts, decreased administrative efficiency, and increased cost of Commission proceedings, all without sufficient off-setting benefit.”² Joint

¹ *Joint Report and Application of Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, LLC and Southwestern Public Service Company for Approval of Purchase and Sale of Facilities, for Regulatory Accounting Treatment of Gain on Sale, and for Transfer of Certificate Rights*, Docket No. 41430, SOAH Order No. 3 at 2 (Sep. 4, 2013).

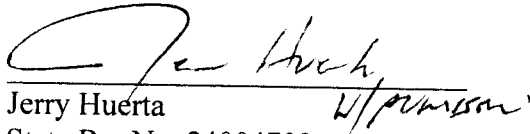
² *Id.*

Applicants believe that these reasons are even more persuasive in this CCN case because a draft environmental assessment is lengthier, more complicated, and essentially only one component of an expert witness' testimony.

IV. CONCLUSION AND PRAYER

For the forgoing reasons, Joint Applicants respectfully request that the Commission sustain these objections, relieve Joint Applicants of responding to the objectionable RFI, and grant Joint Applicants such other relief to which they may show themselves justly entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record this 13th day of September, 2013 by first-class mail or email.

A handwritten signature in black ink, appearing to read 'Sarah Merrick', is written over a horizontal line.

Sarah Merrick