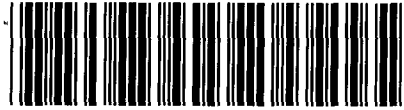


Control Number: 45866



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Addendum StartPage: 0

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2016 OCT -3 AM 11:25⁰⁰¹

PUBLIC UTILITY COMMISSION
FILING CLERK

SOAH DOCKET NO. 473-15-4342
PUC DOCKET NO. 45866

APPLICATION OF LCRA	§	BEFORE THE STATE OFFICE
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND A	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY FOR THE ROUND	§	OF
ROCK - LEANDER 138 KV	§	
TRANSMISSION LINE IN	§	
WILLIAMSON COUNTY	§	ADMINISTRATIVE HEARINGS

**INTERVENOR, CITY OF CEDAR PARK'S MOTION FOR EXTENSION OF TIME TO
FILE OBJECTIONS TO PREFILED TESTIMONY**

TO: The Honorable Wendy K.L. Harvel and Beth Bierman, Administrative Law Judges:

COMES NOW, City of Cedar Park, Intervenor in the above referenced proceeding and files this its Motion for Extension of Time to File Objections to Prefiled Testimony in the matter of the Lower Colorado River Authority Transmission Services Corporation's ("LCRA") Application to Amend a Certificate of Convenience and Necessity for the Round Rock - Leander 138 KV Transmission Line in Williamson County, and would show the ALJ as follows:

**I.
REQUEST FOR EXTENSION OF TIME**

On September 30, 2016, Intervenor delivered and filed its Objections to Prefiled testimony electronically on the PUC Interchange, and with the required amount of paper copies at the PUC Clerk's office. Intervenor experienced some technical difficulty when completing this process. As Intervenor's counsel Lynn Sherman was completing his client's Objections, his computer began a system update, without warning and with no option to interrupt, effectively shutting him out of a not fully saved document. After the update failed and attempted to reboot multiple times, Mr. Sherman drove to Intervenor's co-counsel Jackson, Sjoberg, McCarthy &

1319

Townsend's office, where he was able to finally access and transfer the document, quickly lump the unsaved objections into a single bulk objection, and then upload it to the PUC interchange. Even then it took a few tries at that office before the upload went through and produced the necessary confirmation page for in-person filing. These errors caused the upload to not take place until after the 3:00 PM deadline. Once the upload was completed and Intervenor obtained the necessary confirmation, the requisite amount of copies were taken and filed with the PUC clerk, file stamped at 4:19 PM, as seen on the file marked copy attached as Exhibit "A.

Despite Intervenor's best efforts to timely accomplish the electronic filing, while Intervenor did file its Objections on September 30, 2016, there was a late filing by, at most, 1 hour and 19 minutes due to technical complications causing the final electronic file to not be received and formally uploaded until after 3 P.M. Given the Intervenor realizes its Objections were delivered late, since the delay was due to technical issues outside its counsel's control, Intervenor files this Motion requesting an Extension of Time to file its Objections.

Replies to objections are not due until October 10, 2016. All Parties have ample time to file any replies to Intervenor's Objections and, therefore, there is no prejudice or harm to the other Parties in granting the requested extension. As described above, the delay was, at most an hour and 19 minutes. While Intervenor recognizes its Exceptions were not filed by the 3:00 P.M. deadline and apologizes, Intervenor believes there is no harm or prejudice to any party in allowing the Objections be considered in the record as normal. Further, Cedar Park would readily agree to give Land and Home Owners of CR 175; Meritage Homes of Texas, LLC; Stewart Crossing Homeowner Association; and Trails of Shady Oak Residential Community, Inc. an extension to the end of the deadline day, October 10, 2016, to file their response to Cedar Park's Objections to make sure there is no prejudice to any party.

II.
CONCLUSION & PRAYER

WHEREFORE, PREMISES Considered, for all of the foregoing reasons, City of Cedar Park respectfully requests that the ALJs grant the Intervenor's Motion for Extension of Time to File Objections to Prefiled Testimony at 4:19 P.M., September 30, 2016.

Respectfully submitted,

Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com

JACKSON, SJOBERG, MCCARTHY & TOWNSEND, L.L.P.

Edmond R. McCarthy, III.
Jackson, Sjoberg, McCarthy & Townsend
711 W. 7th Street
Austin TX 78701
(512) 225-5606
(512) 225-5565 FAX

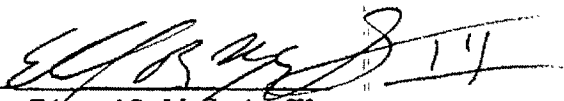
By: 

Edmond R. McCarthy, III
State Bar No. 24066795

ATTORNEYS FOR CITY OF CEDAR PARK

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing Motion for Extension of Time to File Objections to Prefiled Testimony (was electronically filed with the PUC Interchange and the Clerk of the PUC,) as well as served electronically on all parties of record via the PUC interchange in accordance with the Administrative Law Judge's previous orders on this the 3rd day of October, 2016.

By: 
Edmond R. McCarthy, III.

ATTACHMENT "A"

**FILE MARKED COPY OF CITY OF CEDAR PARK'S OBJECTIONS TO PREFILED
TESTIMONY SHOWING 4:19 PM SEPTEMBER 30, 2016 FILING TIME**

PUC DOCKET NO. 45866

RECEIVED

APPLICATION OF LOWER
COLORADO RIVER AUTHORITY
TRANSMISSION SERVICES
CORPORATION TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY

§
§
§
§
§
§
§

BEFORE THE PUBLIC
UTILITY COMMISSION
OF TEXAS
2016 SEP 30 PM 4:19
PUBLIC UTILITY COMMISSION
CLERK

**OBJECTIONS OF THE CITY OF CEDAR PARK, INTERVENOR,
TO PREFILED TESTIMONY OF BRIAN C. ANDREWS ON BEHALF OF LAND AND
HOME OWNERS OF CR 175; MERITAGE HOMES OF TEXAS, LLC; STEWART
CROSSING HOMEOWNER ASSOCIATION; AND TRAILS OF SHADY OAK
RESIDENTIAL COMMUNITY, INC.**

The City of Cedar Park, an Intervenor in the above-referenced matter, hereby objects to and moves to strike certain prefiled testimony of Brian C. Andrews submitted by Land and Home Owners of CR 175; Meritage Homes of Texas, LLC; Stewart Crossing Homeowner Association; and Trails of Shady Oak Residential Community, Inc. (hereinafter collectively "CR 175"), and in support thereof would respectfully show as follows:

I.

INTRODUCTION

CR 175 filed prefiled testimony of Brian C. Andrews. Mr. Andrews is not qualified as an expert and significant parts of his testimony and exhibits are inadmissible pursuant to 30 Tex. Admin. Code ("TAC") §80.127(a)(1) and the Texas Rules of Evidence ("TRE"). Though Mr. Andrews, CR 175 attempts to introduce unqualified expert opinion and other improper opinion testimony, hearsay and evidence that lacks proper foundation, and irrelevant and/or unsupported evidence, as explained herein. Cedar Park objects to and requests that the

B. IMPROPER OPINION TESTIMONY

Cedar Park also objects to certain portions of Mr. Andrews' prefiled testimony as it is improper opinion testimony. Before the introduction of expert testimony, the proponent must show both that "scientific, technical, or other specialized knowledge will assist the trier of fact" and that the expert is qualified by "knowledge, skill, experience, training, or education."¹ Moreover, the methodology and analysis by which experts reach their conclusions must be reliable.² Certain portions of Mr. Andrews' prefiled testimony and exhibits are of no value to the trier of fact, are outside the limited scope of this hearing, are outside the expertise of the witness, or are based on unreliable methodologies or analysis. Such evidence is inadmissible under TRE 702. In addition, "[i]t is well established that 'matters of law are not proper subjects for expert opinion.'"³ Although an expert may state an opinion on a mixed question of law and fact, TRE 704 "does not permit an expert to state an opinion or conclusion on a pure question of law because such question is exclusively for the court to decide."⁴ In several portions of his prefiled testimony, Mr. Andrews opines and reaches conclusions about purely legal issues. This testimony imposes on the exclusive province of the Commission and is inadmissible.

C. RELEVANCE

Cedar Park objects to certain portions of Mr. Andrews' prefiled testimony as irrelevant to the case at hand. Relevant evidence is evidence that has the "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." TRE 401. Evidence that is not relevant is

¹ TRE 702

² *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581 (Tex. 2006); *Merrell Dow Pharms. v. Harnner*, 953 S.W.2d 706, 714 (Tex. 1997).

³ *Schauer v. Memorial Care Systems*, 856 S.W.2d 437, 451 (Tex. App. - Houston [1st Dist.] 1993; no writ) quoting *Adamson v. Burgle*, 186 S.W.2d 388, 396 (Tex. Civ. App. - San Antonio 1945, writ ref'd w.o.m.); see also *Henricks v. Tadaru*, 723 S.W.2d 458, 465 (Tex. App. - Beaumont 1986, no writ).

⁴ *Dickerson v. DeBarbieris*, 964 S.W.2d 680, 690 (Tex. App. - Houston [14th Dist.] 1998, no pet.).

inadmissible under TRE 402. Conclusory and speculative opinion testimony that is not "sufficiently tied to the facts of the case that it will aid the jury in resolving [the] factual dispute"⁵ is irrelevant and, therefore, inadmissible under TRE 402. Furthermore, even if slightly relevant, the probative value of certain prefiled evidence is substantially outweighed by the danger of unfair prejudice and confusion of the issues. Such evidence, even if slightly relevant, is inadmissible under TRE 403.

D. HEARSAY

Cedar Park also objects to certain portions of Mr. Andrews's prefiled testimony because it is inadmissible hearsay. Hearsay is (1) an out of court statement; (2) made by someone other than the declarant; and (3) offered to prove the truth of the matter asserted. TRE 801. Hearsay is inadmissible unless authorized by rule or statute. TRE 802. Certain testimony offered by Mr. Andrews is inadmissible hearsay.

E. PERSONAL KNOWLEDGE

Before the introduction of evidence, the proponent must lay a foundation that the witness has personal knowledge of the matter that is the subject of the testimony. TRE 602. Mr. Andrews fails to introduce such predicate testimony with respect to some of his testimony. Such testimony is therefore inadmissible. In laying a foundation for expert testimony, the expert "may rely on inadmissible hearsay, privileged communications, and other information that ordinary witnesses may not,"⁶ but the proponent of such evidence must show that the evidence is "of a type reasonably relied upon by experts in the particular field in forming opinions or

⁵ *E I du Pont de Nemours & Co. v Robinson*, 923 S.W.2d 549, 556 (Tex. 1995).

⁶ *In re Christus Spohn Hosp Kleburg*, 222 S.W.3s 434, 440 (Tex. 2007).

influences upon the subject.⁷ Cedar Park objects to all of Mr. Andrews's testimony that is offered without personal knowledge or other proper foundation.

III.

SPECIFIC OBJECTIONS TO PREFILED EVIDENCE

Cedar Park objects to the following portions of Mr. Andrews's prefiled direct testimony as being inadmissible:

Page	Lines	Objection	TRE
8	4-6	Mr. Andrews's testimony about the factors that are considered by the Commission and his statement that they are considered by the Commission "holistically" constitute improper opinion testimony, because he is not qualified to testify as to such matters; the issues are purely issues of law; they lie exclusively within the purview of the Commission, about which he has no personal knowledge; and, to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
8	6-11	Mr. Andrews's testimony about how the Commission applies its precedent and the circumstances involved is purely a matter of law and pertains to matters about which he is not qualified to testify in any respect; therefore, it is improper opinion testimony. Moreover, the issues lie exclusively within the purview of the Commission, about which Mr. Andrews has no personal knowledge; and, to the extent his testimony is informed by Commission decisions or other information not in the record, it is inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
8	11-13	Mr. Andrews's testimony that there are additional factors that are considered by the Commission outside those "typically included with each application" is improper opinion testimony, because he is not qualified to testify as to such matters; they lie exclusively within the purview of the Commission and are not within his personal knowledge; and, to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802

⁷ TRE 703.

Page	Lines	Objection	TRE
8 9	16 2	This testimony, which includes Mr. Andrews's assertions about whether and how the Commission gives preference to certain factors and whether the Commission has removed a preference for certain factors pertains to matters that are purely questions of law and are wholly outside Mr. Andrews's asserted expertise and personal knowledge, and, to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
9 10	5 13	The matters addressed in this testimony, including Commission holdings in other cases and whether the Commission gives greater weight to some factors more than others are pure questions of law and matters for which Mr. Andrews does not have the requisite expertise to give testimony; they are outside of his personal knowledge; and, to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
10	18-22	Whether substantially better performance of one factor can ultimately cause the Commission to outweigh inferior performance of another factor is pure speculation, outside the personal knowledge and expertise of the witness, and pertains to interpretation of Commission actions that are questions of law for which Mr. Andrews is not qualified to testify; and to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
11 12	3 3	This testimony pertaining to unique circumstances not readily captured in routing factors that cause the Commission to modify the selection of a transmission line route is pure speculation, outside the personal knowledge and expertise of the witness, and pertains to interpretation of Commission actions that are questions of law for which Mr. Andrews is not qualified to testify; and to the extent they are informed by Commission decisions or other information not in the record, they are inadmissible hearsay.	702, 703 401, 402, 403 602 801, 802
12	5-20	This testimony pertaining to unique circumstances in the routes proposed in the current proceeding is improper opinion testimony, because Mr. Andrews does not have the requisite knowledge, skill, experience, training or education to provide such testimony.	702, 703 401, 402, 403
16 25	4 14	Mr. Andrews does not have the requisite knowledge, skill, experience, training or education to provide any of this testimony.	702, 703 401, 402, 403

IV.
PRAYER

Cedar Park respectfully requests that the ALJ grant the aforementioned Objections to Brian C. Andrews's prefiled testimony and order that Mr. Andrews has not been adequately qualified as an expert in this proceeding and, as a result, any testimony and exhibits that remain unstricken shall be that of a lay witness, and not the testimony of an expert witness.

Respectfully submitted,

By: 

Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com

Edmond R. McCarthy, III.
JACKSON, SJOBERG, MCCARTHY & TOWNSEND, L.L.P.
711 W. 7th Street
Austin TX 78701
(512) 225-5606
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ATTORNEYS FOR CITY OF CEDAR PARK