

Control Number: 45866



Item Number: 1345

Addendum StartPage: 0

RECEIVED

2016 OCT 10 PM 2:45

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

**INTERVENOR, CANNON 140 LP'S, RESPONSE TO  
THE COMMISSION STAFF'S OBJECTIONS AND MOTION TO STRIKE  
PORTIONS OF INTERVENOR'S DIRECT TESTIMONY**

Cannon 140 LP, ("Intervenor") files this its response to the Commission Staff's (the "Staff") Objections to and Motion to Strike Portions of Certain Intervenor's Direct Testimony and as grounds therefor would show the following:

**I.**

**Summary of Staff's Objection and Motion to Strike**

Concerning the testimony of Terry Guerin on behalf of Intervenor, the Staff requests that a portion of the testimony be stricken on the following grounds:

"With regard to the anticipated future uses of property and potential diminution of property values, these are not relevant considerations in approving or routing a proposed transmission line. Nothing in the Public Utility Regulatory Act or the Commission's substantive rules lists diminution in property values or future use as factors to be considered by the Commission"

**II.**

**Intervenor's Response to Objection and Motion to Strike**

The LCRA has proposed transmission routes that cross both land and easements owned by Intervenor. Intervenor has offered direct testimony and exhibits as evidence that such crossings would negatively impact the use of and affect the value of Intervenor's property.

1345

In support of its argument that the future use of Intervenor's property is not relevant, the Staff argues that the Public Utility Regulatory Act (PURA) sets forth several factors<sup>1</sup> which, the Staff argues, are the only factors that the Commission may consider in deciding whether to grant a certificate of convenience and necessity ("CCN"). The Staff's reliance on PURA in this regard is misplaced. The statute does not expressly limit the Commission's consideration to the identified factors. Texas courts have long held that §37.056 states the factors for the PUC's consideration in the "broadest possible terms."<sup>2</sup> The expression in the statute "*other factors such as*"<sup>3</sup> (emphasis added) clearly demonstrates that the identified factors are not intended to be exclusive. The exclusivity argument was expressly rejected in the *Texland*<sup>4</sup> decision where the Court held that the Commission could consider a factor not expressly named in PURA, whether the applicant had established its ability to provide the facilities as "a reasonable inference from the factors listed in PURA Section 54."<sup>5</sup> The Commission has previously held that evidence of existing and potential growth and development may be considered since "that is expressed as part of community values."<sup>6</sup>

The Staff seeks to exclude testimony of Terry Guerin concerning the negative impact that the power lines would have on the property's vistas as being irrelevant. The Commission has previously found that visual impact is an aesthetic value which may be considered in granting an application.<sup>7</sup>

The Commission Staff further relies on 16 Tex. Admin. Code Section 25.101(b)(3)(B)(i)-(iv) for its contention that Intervenor's evidence is irrelevant. However, when addressing routing,

---

<sup>1</sup> Section § 37.056 (c).

<sup>2</sup> *Public Utility Commission v. Texland Electric Co.*, 701 S.W.2d 261, 266 (Tex. App. – Austin 1985 writ ref'd n.r.e.); *Southwestern Elec. Power Co. v. PUC of Tex.*, 419 S.W.3d 414 reh'g denied 2013 LEXIS 655 (Sup. Ct. 2013).

<sup>3</sup> Section 37.056 (c) (4).

<sup>4</sup> 701 S.W. 2d at 268, 269.

<sup>5</sup> Id. at 268, 269.

<sup>6</sup> *Application of TXU Electric Delivery Company to Amend A Certificate of Convenience and Necessity For a Transmission Line within Jack, Wise and Denton Co*, Docket No. 30168.

<sup>7</sup> *Application of LCRA Transmission Services Corporation to Amend Its Certificate of Convenience and Necessity for a 138 -KV Transmission Line in Kendall Bexar Counties*, Docket No. 29684 Order on Rehearing at 4 (Mar 22, 2006) ("Kendall Bexar Application").

the section expressly provides that “the line shall be routed to the extent *reasonable to moderate the impact on the affected community and landowners* (emphasis added) unless grid reliability and security dictate otherwise. The Commission Staff seeks to exclude the exact evidence that Intervenor is offering to establish the negative impact on its property. Without such evidence, the Commission cannot fairly and reasonably determine the impact of the proposed route on a landowner.

The Commission Staff cites the Kendall Bexar Application<sup>8</sup> as support for its contention that Intervenor’s evidence is irrelevant. The decision in the Kendall Bexar Application does not stand for the blanket proposition that evidence of future development is not relevant in an application to amend a CCN. Instead, the holding of irrelevance was limited to “post notice” developments. In the Kendall Bexar Application proceeding, the ALJs recommended that changes affecting the route, after notice of the CCN application had been given, should continue to be reviewed on a case by case basis. The Commission held that future developments after notice were too indefinite to be viewed as criteria in selecting a route.

In this proceeding, the LCRA gave notice of its application for a CCN on April 28, 2016. Intervenor’s development plans preceded the LCRA’s notice of the filing of its application by approximately two years.<sup>9</sup> By the time the LCRA gave the notice, Intervenor had already purchased the land, the water and utility easements and had incurred over \$300,000 in development expenses. The evidence that the Staff seeks to exclude is not post notice evidence.

The Commission Staff argues that evidence of diminution in market value is not relevant in this proceeding in light of the June 21, 2016 Order of Referral and Preliminary Order. The Order is directed as evidence of *appropriate compensation* (emphasis added) for right-of-way or condemnation of property. Intervenor has not offered any evidence of the amount of compensation it would receive. Instead, Intervenor’s evidence is limited to establishing the negative impact that the transmission line would have on its property.

---

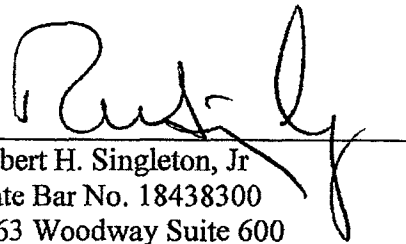
<sup>8</sup> *Id.* (See footnote 7).

<sup>9</sup> See testimony of Terry Guerin and attached exhibits.

**III.  
Conclusion**

The factual basis of the relevance question are the standards for granting or denying a CCN. As argued by the Staff, evidence is relevant if it has “any tendency to make a fact more or less probable than it would without the evidence.” The evidence offered by Intervenor and objected to by the Staff goes directly to proving factors that may be considered under PURA and the Commission’s substantive rules. The testimony and exhibits represent some evidence of the negative impact the routes being objected to would have on Intervenor’s property. The Staff’s objections should be overruled and the motion to strike denied.

Respectfully submitted

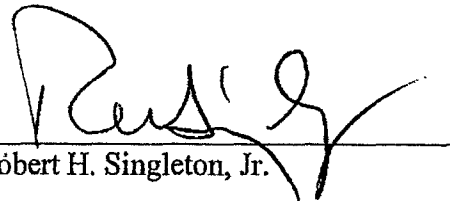


Robert H. Singleton, Jr  
State Bar No. 18438300  
6363 Woodway Suite 600  
Houston, Texas 77057  
713-532-6200 Phone  
713-532-6400 Fax  
[rsingleton@singletoncooksey.com](mailto:rsingleton@singletoncooksey.com)

ATTORNEY FOR CANNON 140 LP

**CERTIFICATE OF SERVICE**

I certify that a copy of the forgoing document was served pursuant to SOAH Order No. 2 in this docket.



Robert H. Singleton, Jr.