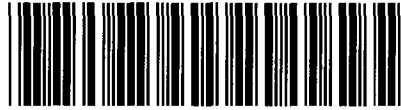


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Item Number: 1590

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SOAH DOCKET NO. 473-16-4342
PUC DOCKET NO. 45866

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

BEFORE THE PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION
OF TEXAS

LEANDER INDEPENDENT SCHOOL DISTRICT REPLY TO JOINT MOTION TO STRIKE LEANDER INDEPENDENT SCHOOL DISTRICT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION AND RESPONSE TO EXCEPTIONS

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

In response to the Movants,¹ the Leander Independent School District asks a simple question:

Does the Public Utility Commission of Texas consider three planned schools relevant to the routing of a 138-kV transmission line through a rapidly growing portion of Central Texas?

As stated in the briefing filed by Leander Independent School District (Leander ISD) in this case, this question must be answered in the affirmative. The Movants seek to bind the hands of the Public Utility Commission of Texas (Commission) and limit the Commission's ability to consider facts that are relevant to this Docket. The Movants' position ignores the Commission's broad and express authority to review the record in this Docket and decide this matter accordingly.

The Commission has the express authority to reverse the evidentiary rulings in this Docket and to consider the evidence – all the evidence – offered by Leander ISD. The Commission rules

¹ "Movants" refers to, collectively, LCRA Transmission Services Corporation (LCRA TSC), the City of Cedar Park, the City of Leander, Burleson Ranch and Lagmanson (collectively referring to Mary Frances Burleson Roberts; Burleson Ranches, Ltd. John W. Roberts; Frank B. Roberts; Mary Roberts Ortiz; MFBRGP, LLC; Russell Austin Burleson; and Markus Lagmanson) and Riverside Resources (collectively referring to Reagan & FM 2243, Ltd; NEC Reagan & 2243, LP; and Beasely Tract, LP.²

1590

grant the Commission broad authority to review the actions of SOAH in this Docket, not the narrow, restrained powers urged by the Movants. Accordingly, Leander ISD files this, its Reply to Joint Motion to Strike Leander Independent School District's Exceptions to the Proposal for Decision and Response to Exceptions, and respectfully requests the Commission to vacate the erroneous evidentiary orders issued by SOAH in this Docket and consider all of the evidence offered by Leander ISD.

I. FACTUAL AND PROCEDURAL BACKGROUND

Leander ISD filed the Direct Testimony of Jimmy Disler and Mark McNeal in this Docket. This direct testimony establishes that there will be three schools built on a tract of land owned by Leander ISD at the southwest corner of FM 2243, also known as Leander Road, and County Road 175 (School Tract). Leander ISD will begin construction of an elementary school on the School Tract in 2019,² the same year that LCRA TSC will begin construction on its proposed 138-kV line.³ Such testimony also establishes that the proposed 138-kV line along either Route 31, proposed by LCRA TSC, or the route identified as CoL-1, proposed by the City of Leander, would cross the School Tract, nearly the entirety of a proposed elementary school, and large portions of the facilities to be built on the School Tract.⁴ Commission Staff (Staff), and only Staff, objected to portions of Mr. Disler's testimony and all of Mr. McNeal's testimony on the grounds that the testimony addressed future use and was therefore not relevant to this Docket.⁵ Leander ISD's briefing in response to the Staff Objection established that the testimony of Mr. Disler and Mr.

² Leander ISD Offer of Proof No. 2, Direct Testimony of Jimmy Disler, at 4.

³ LCRA TSC Ex. 1 at 9, Application of LCRA Transmission Service Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Leander to Round Rock 138-kV Transmission Line Project in Williamson County, Texas (Application).

⁴ Leander ISD Offer of Proof No. 2, Direct Testimony of Jimmy Disler at Exhibit A; LISD Offer of Proof No. 3, Direct Testimony of Mark McNeal at Exhibit A.

⁵ Commission Staff's Objection to and Motion to Strike Portions of Certain Intervenors' Direct Testimony at 4 (Sept. 30, 2016) (Staff Objections).

McNeal was relevant to the factors of community values, recreational and park areas, and prudent avoidance.⁶ The LISD Response also established that Staff misinterpreted the Commission's statement in Docket 29648 regarding future use and ignored Commission precedent allowing testimony regarding planned development if the developer had taken concrete steps toward such development.⁷ Despite Leander ISD's arguments, SOAH issued Order No. 9, excluding all of Mr. McNeal's testimony and the bulk of Mr. Disler's testimony on October 27, 2016, after the deadline for filing cross-rebuttal testimony. Leander ISD offered the entirety of the testimony of Mr. Disler and Mr. McNeal as LISD Offers of Proof 2 and 3, respectively. Despite Order No. 9, evidence of the schools planned for the School Tract was admitted with the Application in this Docket,⁸ the testimony and evidence offered by the City of Leander,⁹ and in a portion of Mr. Disler's testimony admitted over Staff's objection.¹⁰

In order to provide the Commission with additional context for Leander ISD's development of the three schools, Leander ISD filed the Supplemental Testimony of Jimmy Disler on November 7, 2016, a week before the start of the SOAH hearing in this Docket. Staff and several of the Movants objected on the grounds that the Supplemental Testimony was not properly submitted, was not relevant and deprived them of a reasonable opportunity to respond. During the Pre-Hearing Conference, Leander ISD rebutted all such objections. However, SOAH again ruled that the Commission should not be allowed to see all of the relevant evidence in this case.¹¹ This ruling is

⁶ Response of Leander Independent School District to Commission Staff's Objection to and Motion to Strike Portions of Certain Intervenors' Direct Testimony at 5-7 (Oct. 7, 2017) (LISD Response).

⁷ LISD Response at 8-10.

⁸ LCRA TSC Ex. 1, Attachment 1 at 2-37 (EA).

⁹ City of Leander Ex. 2, Cross-Rebuttal Testimony, Attachment TY-27 at 105.

¹⁰ Leander ISD Ex. 1, Direct Testimony of Jimmy Disler at 4 (stating that LCRA's preferred route 31 is in the vicinity of three new schools).

¹¹ Tr. 70:2-6 (November 10, 2016).

erroneous for the reasons stated Leander ISD's Response to Exceptions. Leander ISD submitted Mr. Disler's supplemental testimony as LISD Offer of Proof No. 1.

SOAH filed its Proposal for Decision in this Docket (PFD) on March 22, 2017. Leander ISD timely submitted Exceptions to Proposal for Decision and Responses to Exception. Leander ISD's post-PFD briefing included challenges to the validity of Order No. 9 and SOAH's ruling regarding Mr. Disler's supplemental testimony (collectively, the "Evidentiary Orders"). The Commission has the express authority to modify or vacate the Evidentiary Orders. For the reasons stated in Leander ISD's previous briefing, the Commission should do so in this Docket so that all relevant evidence is before it.

II. ARGUMENT

A. Section 22.262. Commission Action after Proposal for Decision

The Commission has the express authority to change findings of fact and conclusions of law proposed by SOAH and to vacate or modify erroneous orders. The Commission should exercise this authority to reverse the Evidentiary Orders. Doing so allows the Commission to consider all the evidence it needs to determine whether building a 138-kV across property that will be home to three schools in a rapidly growing community best satisfies the Commission's obligation to moderate the impact of a proposed transmission line on the community and landowners in Williamson County.

After a proposal for decision has been issued, Section 22.262(a) of the Rules of the Public Utility Commission of Texas authorizes the Commission to change a finding of fact or conclusion of law made by the administrative law judge "or vacate or modify an order issued by the administrative law judge" if the Commission determines that the administrative law judge "did not properly apply or interpret applicable law, commission rules or policies, or prior administrative

decisions.”¹² As briefed in Leander ISD’s Exceptions to Proposal for Decision and in its Response to Exceptions to Proposal for Decision, the Evidentiary Orders were erroneous in that the Evidentiary Orders did not properly apply and interpret applicable law and the Commission’s rules or policies. Accordingly, the Commission has the authority to vacate or modify the Evidentiary Orders, and admit the excluded testimony and documents offered as Leander ISD Offers of Proof 1, 2 and 3 into evidence.

The Commission has the express authority to modify or vacate the erroneous Evidentiary Orders that excluded large portions of relevant evidence offered by Leander ISD in this Docket. Because the Evidentiary Orders did not properly apply and interpret the applicable law and the Commission’s rules or policies, the Evidentiary Orders should be modified or vacated such that the excluded evidence is admitted in this Docket. Once admitted, the Commission may properly consider this evidence to determine whether routing a 138-kV line across property planned for three schools appropriately moderates the impact of the proposed project on the community and the landowners.

B. Ruling on Record Evidence and Matters Officially Noticed

The Texas Administrative Procedure Act provides that “[f]indings of fact may be based only on the evidence and on matters that are officially noticed.”¹³ Once the Commission vacates or modifies the Evidentiary Rulings to admit Leander ISD’s evidence in this Docket, such evidence is a proper basis for the Findings of Fact proposed by Leander ISD.

C. Evidentiary Rulings are Subject to Exceptions

The Movants’ complaint that evidentiary rulings are not appealable under Section 22.123 is inapposite to the issues at hand. Leander ISD is not appealing the Evidentiary Orders. It is

¹² 16 Tex. Admin. Code § 22.262(a).

¹³ Tex. Gov’t Code § 2001.141(c).

challenging them by exceptions and invoking the Commission's authority to modify or vacate the erroneous rulings pursuant to Section 22.262.

Any interim order that immediately prejudices a substantial right of a party, or materially affects the course of hearing may be appealed – except for evidentiary rulings.¹⁴ Additionally, all appeals of interim orders must be filed within ten days of the relevant ruling.¹⁵ The only limit on the ability to challenge an interim order via exception or application is that no such challenge may be made prior to the issuance of a proposal for decision.¹⁶

Leander ISD does not seek to appeal the Evidentiary Orders. The Evidentiary Orders were issued on October 27, 2017 and November 10, 2017. Leander ISD did not appeal the Evidentiary Orders pursuant to Section 22.123, as no such appeal is available. Furthermore, the time for appeal under Section 22.123 has long passed. Instead, Leander ISD is challenging the Evidentiary Orders after the issuance of the PFD via exceptions as contemplated by Section 22.123(a)(1). The Commission has the express authority to modify or vacate the Evidentiary Orders and should do so.

III. CONCLUSION

The Movants ignore the express authority given to the Commission by the Texas Administrative Code in an effort to limit the Commission's ability to review all relevant evidence in this Docket. The Evidentiary Orders are erroneous in that they did not properly apply and interpret the applicable law and the Commission's rules or policies. Accordingly, the Commission should modify or vacate the Evidentiary Orders such that the erroneously excluded evidence offered by Leander ISD is admitted in this Docket. Once admitted, the Commission can properly

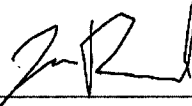
¹⁴ 16 Tex. Admin. Code § 22.123(a)(1).

¹⁵ 16 Tex. Admin. Code § 22.123(a)(2).

¹⁶ *Id.*

determine whether building a 138-kV line across an elementary school and the grounds of a middle school and high school moderates the impact of this project on the community and landowners.

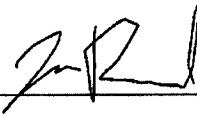
Respectfully submitted,



Jason M. Rammel
The Law Office of Jason M. Rammel
State Bar No. 24056179
17080 Hwy. 46 West, Suite 108-C
Spring Branch, Texas 78070
Phone: (830) 885-2406
Mobile: (512) 981-8868
Fax: (866) 561-5512
therammelfirm@gmail.com
Attorney for Leander Independent School District

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the was filed on the PUC Interchange on the 27th day of April, 2017, in accordance with SOAH Order No. 1 in this proceeding.



Jason M. Rammel