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SOAH DOCKET NO. 473-17-1552
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APPLICATION OF BRAZOS § BEFORE THE STATE OFFICE
ELECTRIC POWER COOPERATIVE, §
INC. TO AMEND ITS CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
FOR A 138-KV TRANSMISSION LINE § OF
IN COLLIN COUNTY, TEXAS § ADMINISTRATIVE HEARINGS

**WILLIAM R. WINES AND KAREN R. WINES, THE WINES FAMILY
IRREVOCABLE TRUST, WINES PROPERTY TRUST, WINES
GRANDCHILDREN TRUST, WALT HENRION AND MGA FAMILY LP'S
RESPONSE TO CITY OF MCKINNEY'S OBJECTIONS AND MOTION TO
STRIKE INTERVENOR DIRECT TESTIMONY**

COMES NOW, William R. Wines and Karen R. Wines, the Wines Family Irrevocable Trust, Wines Property Trust, Wines Grandchildren Trust ("the Wines Properties"), Walt Henrion and MGA Family LP, Intervenor in this case proceeding, and files this their Response Commission City of McKinney's Objections and Motion to Strike Intervenor Direct Testimony and in support hereof would show:

I.

The Wines Properties, Walt Henrion and MGA Family LP, Intervenor filed their direct testimony on April 28, 2017. On May 10, 2017, City of McKinney, filed Objections to and Motion to Strike Intervenor Direct Testimony. Pursuant to SOAH Order No. 4, Replies to Objections to Intervenor Direct Testimony are due on May 17, 2017. Therefore, this Response to Staff's Objections and Motions to Strike is timely filed.

II. City of McKinney objects to testimony regarding electro-magnetic fields, future use and potential diminution in property values

City of McKinney objects that statements about alleged health effects of electro-magnetic fields ("EMF") require expert testimony and the witnesses making such

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testimony are not qualified to give an expert opinion. The City of McKinney also objects that Intervenor testimony concerning future use and potential diminution in property values as not relevant.¹

The Wines Properties, Walt Henrion and MGA Family LP do not claim to be experts on EMF or related EMF interferences. The objected-to testimony consisting of general statements of concern and lay opinions regarding possible diminished property values (valuation), future uses, and exposure to EMF. These general statements and opinions are not “speculation” and are legitimate statements of concern reflecting community values that should not be struck from the record. Rather, the ALJs should accord such testimony the appropriate weight as has been done in most cases.² Therefore, these statements are relevant under Rules 401 and 402 of the Texas Rules of Evidence and appropriate lay witness opinion testimony pursuant to Rule 701 of the Texas Rules of Evidence as they are “rationally based on the witness’s perception” and “helpful to

¹ Brazos, the City of McKinney and Staff object to the direct testimony of William R. Wines and Karen R. Wines, the Wines Family Irrevocable Trust, Wines Property Trust, Wines Grandchildren Trust, Walt Henrion and MGA Family LP.

² See, e.g., *Application of AEP Texas North Company and Electric Transmission of Texas, LLC to Amend their Certificates of Convenience and Necessity for a 138-kV Transmission Line within McCulloch and Menard Counties (Heartland to Yellowjacket)*; Docket No. 46234, Order No. 5 (February 28, 2017) (denying similar objections by AEP TNC & ETT and Staff); *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line within Hale, Hockley, Lubbock, Terry and Yoakum Counties (Tuco to Yoakum)*; Docket No. 46042, Order No. 4 (January 18, 2017) (denying similar objections by Commission and SPS for these reasons); *Application of LCRA Transmission Services Corporation to Amend a Certificate of Convenience and Necessity for the Zorn-Marion 345-kV Transmission Line in Guadalupe County*; Docket No. 45601, Order No. 6 (May 31, 2016) (denying similar objections by Commission Staff and LCRA for these reasons) *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Denton County*; Docket No. 45170, Order No. 5 (April 5, 2016) (denying similar objections by Commission Staff and Brazos Electric for these reasons); *Application of AEP Texas Central to Amend a Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Bee County and Goliad County, Texas*; Docket No. 44837, Order No. 7 (February 17, 2016) (denying similar objections by Commission Staff and AEP Texas Central for these reasons); *Application of CenterPoint Energy Houston Electric, LLC to Amend a Certificate of Convenience and Necessity for a Proposed 345-kV Transmission Line within Grimes, Harris, and Waller Counties, Texas*, Docket No. 44547, Order No. 9 (Aug. 5, 2015) (denying similar objections by Commission Staff and CenterPoint for these reasons).

clearly understand the witness's testimony." Furthermore, the statements are not hearsay under Rules 801 and 802 of the Texas Rules of Evidence as they are not offered "to prove the truth of the matter asserted in the statement."

III. Intervenor Wines/Henrion's testimony should not be struck

The purpose of Mr. Wines and Mr. Henrion's testimony is to show that it will be less expensive to construct the lines underground than above ground, thereby saving the rate payers of Texas, and, therefore, the P.U.C. needs to order these lines be constructed underground.

Mr. Wines' testimony does not directly relate to the future development of the property. Instead, it relates to what price he can sell the property NOW versus with the overhead power lines. Addressing the diminution of property value in condemnation proceedings will be too late since the diminution of property values relates to the necessity of putting these lines underground. The decrease in fair market value is not speculative or indefinite but rather relates to the amount at which the Wines/Henrion properties can be sold currently. Mr. Wines has been actively trying to sell these properties as evidenced by several contracts and Letters of Intent that he has received. However, the announcement of the proposed above ground power lines has caused the potential buyers to not purchase these properties.

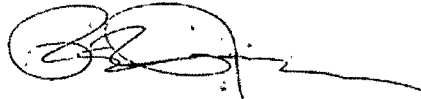
V.

WHEREFORE, PREMISES CONSIDERED, The Wines Properties, Walt Henrion and MGA Family LP respectfully request that the ALJs deny all of the objections and Motion to Strike Intervenor Direct Testimony by the City of McKinney

Respectfully submitted,

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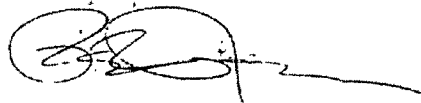
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**ATTORNEYS FOR THE WINES
PROPERTIES, WALT HENRION AND MGA
FAMILY LP**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 17, 2017 in accordance with SOAH Order No. 2 in this docket.



Patrick L. Reznik