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BEFORE THE STATE OFFICE
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APPLICATION OF BRAZOS §
ELECTRIC POWER COOPERATIVE, §
INC. TO AMEND ITS CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
FOR A 138-KV TRANSMISSION LINE §
IN COLLIN COUNTY, TEXAS §

ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO THE APPEAL OF SOAH ORDER NO. 7
STRIKING DIRECT TESTIMONY OF JAMES A. ROHRIG, MAI, CPA.**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to the Appeal of SOAH Order No. 7 by the TMF Intervenors. Staff recommends that the TMF Intervenors' appeal of SOAH Order No. 7 be denied. In support of this recommendation, Staff states the following:

I. Background and Summary of Staff's Response

On May 10, 2017, Brazos Electric Power Cooperative, Inc. (Brazos) and Staff filed objections to the prefiled direct testimony of James A. Rohrig, MAI, CPA.¹ On May 17, 2017, Allen Economic Development Corp., Briar Ridge Investments, Ltd., Cottonwood Creek Baptist Church, Johnson Centre, Ltd., Meadow Road/Ford, L.P., and the P. Bush Elkin Property Co., Ltd. (collectively, the TMF Intervenors) filed a response to Brazos' and Staff's objections to Mr. Rohrig's testimony.² On May 30, 2017, SOAH Order No. 7 was issued which, among other issues, granted Brazos' and Staff's objections to and motions to strike Mr. Rohrig's testimony.³ On June 9, 2017, the TMF Intervenors filed an appeal of SOAH Order No. 7, arguing that the ALJ's ruling concerning the admissibility of Mr. Rohrig's testimony was incorrect and requesting that the

¹ Brazos Electric's Objections to and Motion to Strike the Direct Testimony of James A. Rohrig (May 10, 2017); Commission Staff's Objections to and Motion to Strike Portions of Certain Intervenors' Direct Testimony at 3 & 6-8 (May 10, 2017).

² TMF Intervenors' Response to Objections to and Motions to Strike the Direct Testimonies of TMF Intervenors and James A. Rohrig, MAI, CPA (May 17, 2017).

³ SOAH Order No. 7: Ruling on Evidentiary Objections, Denying Late Motions to Intervene, and Dismissing Intervenors at 1-3 (May 30, 2017).

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Commission overturn that portion of SOAH Order No. 7.⁴ Pursuant to 16 Tex. Admin. Code § 22.123(a)(4) (TAC), any responses to an appeal of an interim order shall be filed within five working days of the filing of the appeal. Therefore, this response is timely filed.

In Staff's Objections to and Motion to Strike Portions of Certain Intervenors' Direct Testimony, Staff requested among other things that portions of the direct testimony of James A. Rohrig, MAI, CPA, be struck as not relevant pursuant to 16 TAC § 22.221(a) and Tex. R. Evid. 401.⁵ Staff supports Brazos' objections to Mr. Rohrig's testimony that it goes beyond what is required of Brazos in such applications and furthermore is simply an attempt to introduce compensation for right-of-way determinations into the docket.⁶ The ALJs appropriately considered the positions of Brazos, Staff, and the TMF Intervenors in making their ruling in SOAH Order No. 7⁷ and the TMF Intervenors' appeal makes no new arguments.⁸ As further detailed below, Staff recommends that the appeal of SOAH Order No. 7 be denied.

III. TMF Intervenors' Appeal is Without Merit

The TMF Intervenors' appeal of SOAH Order No. 7 is without merit as the ALJs fully and properly considered all the parties' positions and no new arguments have been raised. First, the TMF Intervenors' attempts to rebut the fact that Mr. Rohrig's testimony goes beyond what is required of Brazos in the application process are erroneous. As Brazos aptly noted, no Commission rule or guideline exists requiring an applicant to provide routing cost estimates in the form of appraisal-level data.⁹ The Commission only requires applicants to provide a general cost estimate precisely because requiring appraisal-level estimates akin to that of Mr. Rohrig's testimony would inevitably default to a finding of appropriate compensation for right-of-way, which the Commission lacks the authority to consider.¹⁰

⁴ Appeal of SOAH Order No. 7 Striking Direct Testimony of James A. Rohrig, MAI, CPA (June 9, 2017).

⁵ See Commission Staff's Objections to and Motion to Strike Portions of Certain Intervenors' Direct Testimony at 3 & 6-8.

⁶ See Brazos Electric's Objections to and Motion to Strike the Direct Testimony of James A. Rohrig.

⁷ SOAH Order No. 7: Ruling on Evidentiary Objections, Denying Late Motions to Intervene, and Dismissing Intervenors at 1-3.

⁸ See generally Appeal of SOAH Order No. 7 Striking Direct Testimony of James A. Rohrig, MAI, CPA.

⁹ Brazos Electric's Objections to and Motion to Strike the Direct Testimony of James A. Rohrig at 1-2.

¹⁰ Order of Referral and Preliminary Order at 5 (Dec. 7, 2016) ("The Commission does not have the authority to adjudicate or set the amount of compensation for rights of way or for condemnation.").

Furthermore, the TMF Intervenor's appeal only confirms the objections made by Brazos and Staff to the admission of Mr. Rohrig's testimony. Responding to Brazos' previous assertions that Mr. Rohrig's testimony is an attempt to establish appropriate compensation for right-of-way, the TMF Intervenor's appeal insists that Mr. Rohrig's testimony is offered for the limited purpose of challenging Brazos' general estimate of right-of-way costs and "...not [to] establish the appropriate compensation for the taking of TMF Intervenor's properties."¹¹ However, as SOAH Order No. 7 clearly intends, using appraisal data to "contradict" a general estimate simply introduces a new estimate. Mr. Rohrig's appraisal does not support a finding that Brazos' general estimates are unreasonable as the appeal argues,¹² but rather simply seeks to replace Brazos' estimates with estimates that are higher but still within the same realm of reasonableness. The appeal points to the statement in Mr. Rohrig's testimony that the "estimate of the easement value is not an appraised value of any specific site."¹³ However, Staff notes that while Mr. Rohrig's data may not be solely specific to sites owned by the TMF Intervenor, it nonetheless attempts to establish a higher valuation for right-of-way along particular routing segments. The ALJs appropriately observe in their ruling in SOAH Order No. 7 that an admittance of Mr. Rohrig's testimony attesting to appraisals concerning the market value of the easement interest of the land opens the door to findings of fact establishing exactly that issue which the Commission clearly articulated in the Preliminary Order should not be addressed.¹⁴ For these reasons, Staff recommends that the TMF Intervenor's appeal of SOAH Order No. 7 is without merit and should be denied.

IV. Conclusion

For the above stated reasons, Staff respectfully recommends that the TMF Intervenor's Appeal of Order No. 7 Striking the Direct Testimony of James A. Rohrig be denied.

¹¹ Appeal of SOAH Order No. 7 Striking Direct Testimony of James A. Rohrig, MAI, CPA at 5.

¹² *Id.* at 2-3.

¹³ *Id.* at 3 (quoting Direct Testimony of James A. Rohrig, MAI, CPA at 35 (Apr. 28, 2017)).

¹⁴ SOAH Order No. 7: Ruling on Evidentiary Objections, Denying Late Motions to Intervene, and Dismissing Intervenor's at 2.

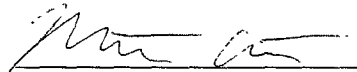
Dated: June 16, 2017.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 16, 2017, in accordance with 16 Tex. Admin. Code § 22.74.



Matthew A. Arth