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APPLICATION OF LCRA §  
TRANSMISSION SERVICES §  
CORPORATION TO AMEND ITS §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY FOR THE §  
PROPOSED COOKS POINT 138-KV §  
TRANSMISSION LINE PROJECT IN §  
BURLESON COUNTY, TEXAS §

PUBLIC UTILITY COMMISSION  
FILING CLERK

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**LCRA TRANSMISSION SERVICES CORPORATION'S MOTION TO COMPEL  
DISCOVERY RESPONSES FROM ATMOS PIPELINE – TEXAS, A DIVISION OF  
ATMOS ENERGY CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW LCRA Transmission Services Corporation (LCRA TSC) and, pursuant to 16 Tex. Admin. Code (TAC) § 22.144(e), files this Motion to Compel Discovery Responses to its First Request for Information (RFI) from Atmos Pipeline – Texas, a division of Atmos Energy Corporation (Atmos). This motion is timely filed on or before December 10, 2018.

**I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

On October 23, 2018, Atmos pre-filed the Direct Testimony of Eric Dygert in this docket. In his testimony, Mr. Dygert extensively discusses the following issues:

- Potential impacts of crossing or paralleling electric transmission lines and natural gas steel pipelines;
- The risks associated with routing electric transmission lines near natural gas steel pipelines; and
- The steps allegedly necessary to mitigate such risks, including estimated costs associated with mitigation activities.

LCRA TSC objected to and moved to strike the bulk of such testimony, contending these issues are not relevant to the matters the Public Utility Commission of Texas (Commission) must decide in this case. The Administrative Law Judges (ALJs) have not yet ruled on LCRA TSC's motion to strike Mr. Dygert's testimony.

In light of Mr. Dygert's testimony, LCRA TSC filed and served Atmos with its First RFI on November 21, 2018. On December 3, 2018, Atmos filed its objections to LCRA TSC's First RFI. Atmos specifically objects to the following two RFIs:

1.6 What amounts, if any, for AC mitigation measures to address the potential effect of AC interference on natural gas pipelines crossed or paralleled by electric transmission facilities has Atmos included in a request for rate recovery, including interim relief? For any amounts responsive to this request, provide the docket number of the proceeding in which it sought such recovery.

1.7 What amounts, if any, for AC mitigation measures to address the potential effect of AC interference on natural gas pipelines crossed or paralleled by electric transmission facilities has Atmos received approval to recover in its rates, including interim relief? For any amounts responsive to this request, provide the docket number of the proceeding in which it received such recovery.

Atmos contends these RFIs seek information not relevant to this proceeding. As shown further below, Atmos's position is untenable. If Mr. Dygert's testimony is allowed into the record, then these requests seek information directly related to his testimony. If these requests are irrelevant—as Atmos alleges—then this shows that Mr. Dygert's testimony is not relevant. Atmos cannot have it both ways. LCRA TSC will be prejudiced if, on one hand, Atmos is permitted to argue that the potential for AC interference may impact its pipelines, directly resulting in mitigation costs the Commission should consider when evaluating routes in this case, while on the other hand, Atmos is allowed to avoid discovery designed to examine foundational questions about whether Atmos has previously demonstrated a reasonable basis for—and actually recovered—these same mitigation costs. These two positions by Atmos are incongruent.

## **II. DISCUSSION**

As noted above, on October 23, 2018, Atmos pre-filed Mr. Dygert's direct testimony, which included significant cost information that Mr. Dygert unequivocally presents as being directly related to the costs of LCRA TSC's Project that is at issue in this proceeding. In response to LCRA TSC's objections and motion to strike, Atmos has defended the relevance of such information. Specifically, Atmos makes the following assertions:

- “Mr. Dygert’s testimony is necessary to evaluate these impacts, the public safety concerns associated with these impacts, and the mitigation measures necessary to resolve these impacts to mitigate public safety risks and damage to Atmos Energy’s property and surrounding properties.”<sup>1</sup>
- “Atmos Energy has a right to present evidence on these issues as an affected landowner, as a party able to contribute expert knowledge about engineering constraints, and as a party with relevant information about costs Atmos Energy will incur with regards to certain proposed routes.”<sup>2</sup>
- “The introduction of potential costs associated with AC mitigation on certain routes appropriately evidences the impacts to Atmos Energy as an affected landowner in this proceeding.”<sup>3</sup>
- “Mitigation costs associated with the proposed transmission line directly impact Atmos Energy. . . . The cost information included in Mr. Dygert’s testimony estimates and quantifies the different potential impacts to Atmos Energy depending on the route and is directly relevant to the question of whether there are alternative routes that would have less impact. It is also relevant to determine the incremental costs of modifying or choosing an alternative route.”<sup>4</sup>

Thus, Atmos makes abundantly clear its belief that information related to mitigation measures and costs associated with mitigation are relevant to this proceeding. **This is exactly the type of information sought by LCRA TSC’s RFIs.** The RFIs at issue seek to learn what Atmos has filed before other regulatory bodies in the past regarding these allegedly necessary measures and the costs associated with performing them. If Mr. Dygert’s testimony is allowed into the record, the information sought by these two RFIs is rendered directly relevant to this case.

Atmos’s past efforts to seek regulatory recovery for mitigation costs reflects on both the necessity and reasonableness of such mitigation measures, as well as the costs that might be associated with such measures. Thus, because Atmos seeks to put the issue of mitigation and associated costs in play in this case, it cannot then attempt to shield itself from discovery that would reveal the reasonableness of, and costs associated with, such mitigation measures.

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<sup>1</sup> Atmos Energy Corporation’s Response to LCRA Transmission Services Corporation’s Objections to and Motion to Strike Portions of the Direct Testimony of Eric Dygert at 10 (Nov. 6, 2018) (emphasis added).

<sup>2</sup> *Id.* (emphasis added).

<sup>3</sup> *Id.* at 11 (emphasis added).

<sup>4</sup> *Id.* at 12.

While Atmos may not be seeking to recover any specific mitigation amounts in this proceeding—and has equivocated about whether it will seek such recovery from LCRA TSC and its ratepayers at some point in time<sup>5</sup>—Atmos has offered evidence of the purported costs it contends will be necessary for mitigation measures as a direct result of this Project. Mr. Dygert testified that these cost estimates are based upon an “average cost per mile of mitigation measures it has installed in recent projects in which Atmos Energy has mitigated AC interference associated with nearby electric transmission lines.”<sup>6</sup> But what if, contrary to Mr. Dygert’s assertions in this case, a regulatory body has previously determined that Atmos’s proposed cost per mile for mitigation measures is not reasonable, and ordered recovery of a lower amount? Should the Commission and the parties not be aware of that when trying to assess Atmos’s estimated costs in this proceeding?<sup>7</sup>

To the extent Atmos’s objected-to testimony on mitigation costs is determined to be relevant, then any past regulatory attempts by Atmos to recover mitigation costs are equally relevant because they reflect Atmos’s position regarding types of mitigation necessary, as well as the costs associated with such measures. Moreover, and perhaps more importantly, Atmos’s prior regulatory efforts to recover for such mitigation measures may have resulted in prior administrative determinations on the reasonableness of mitigation efforts necessary to address any AC interference concerns and the propriety of costs associated with such efforts. If the Commission is to confront the issues Atmos raises in this proceeding, then it must have adequate information before it to determine the necessity and propriety of mitigation efforts that Atmos claims are necessarily related to any transmission line route the Commission might approve in this docket. Atmos’s past efforts to recover such amounts go to the very heart of this issue and would provide useful information to the Commission in attempting to consider Atmos’s contentions in this case.

Thus, Atmos’s arguments that this proceeding will not directly address recovery of mitigation amounts misses the point. Atmos’s past efforts to seek recovery of those amounts directly reflects on the reasonableness of Atmos’s assertions in this case and would provide some

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<sup>5</sup> Direct Testimony of Eric Dygert at 31 (Oct. 23, 2018).

<sup>6</sup> *Id.* at 29-30.

<sup>7</sup> In a sense, Atmos’s answer to this question essentially “No. Just trust us and do not go looking into what we have said or done before other regulatory bodies regarding these issues.”

clarity to the Commission and the parties on Atmos's past mitigation efforts, the costs that might be associated with such efforts, and the view of other regulatory bodies regarding the necessity or propriety of such measures. If Mr. Dygert's testimony is allowed into the record, then this information will be critical for the Commission to have in evaluating his contentions. In fact, it is remarkable that Atmos believes such information is not relevant to the issues it raises by Mr. Dygert's testimony.

The Commission's discovery rules broadly permit parties to obtain discovery regarding any matter that is not privileged or exempted under the Texas rules of evidence and civil procedure that is relevant to the subject matter in the proceeding.<sup>8</sup> While LCRA TSC agrees with Atmos that a certificate of convenience and necessity docket for a new transmission line facility is not the appropriate place to litigate potential AC mitigation costs, Atmos has nevertheless attempted to make those costs a central and substantive issue in this proceeding. Pursuant to the Commission's discovery rules, LCRA TSC is entitled to seek discovery on any information relevant to any pending claim or defense that is reasonably calculated to lead to the discovery of admissible evidence.<sup>9</sup> The issue of AC mitigation costs was squarely raised by Atmos in the direct testimony of Mr. Dygert. As such, LCRA TSC is legally permitted to seek information that is reasonably calculated to lead to admissible evidence relating to this testimony.<sup>10</sup>

For the reasons set forth above, the information sought by LCRA TSC in RFIs 1-6 and 1-7 is directly related to the issues that Atmos has attempted to inject into this proceeding, and LCRA TSC hereby moves that Atmos be ordered to respond completely and fully to LCRA TSC's RFIs 1-6 and 1-7 within three days of the issuance of an order granting this motion, unless the ALJs choose to strike Mr. Dygert's testimony on these matters. To address Atmos's concerns that the RFIs are overly broad and unduly burdensome, LCRA TSC is willing to limit its requests to the past 10 years. This is reasonable because the information requested by the RFIs is not anticipated to be burdensome or voluminous. The RFIs seek only monetary amounts and docket numbers.

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<sup>8</sup> 16 TAC § 22.144(a).

<sup>9</sup> 16 TAC § 22.144(e); TEX. R. CIV. P. 192.3(a); *see In re Fort Worth Children's Hosp.*, 100 S.W.3d 582, 589 (Tex. App.—Fort Worth 2003, orig. proceeding). Information is relevant for discovery purposes if it is relevant to the subject matter of the pending action, claim, or defense and is reasonably calculated to lead to the discovery of admissible evidence.

<sup>10</sup> *Id.*

### III. CONFERENCE

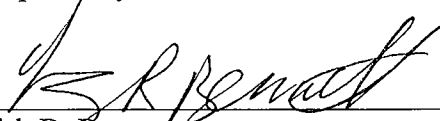
Prior to Atmos's filing of objections, counsel for Atmos and LCRA TSC conferred regarding LCRA TSC's RFIs to Atmos. With respect to RFIs 1-6 and 1-7, both parties made reasonable efforts to resolve Atmos's disputes, but were not able to reach an agreement.

### IV. CONCLUSION AND PRAYER

LCRA TSC contends that pipeline mitigation costs and efforts related to AC interference are not relevant to this case. That is why LCRA TSC has filed a motion to strike portions of the prefiled testimony of Mr. Dygert relating to these issues. Thus, if the ALJs grant LCRA TSC's motion to strike the testimony of Mr. Dygert on these issues, there is no need to grant this motion to compel.

But if the ALJs allow Mr. Dygert's testimony on these issues to be in the evidentiary record, then the RFIs at issue seek information directly related to that testimony and this motion to compel should be granted. LCRA TSC's RFIs 1-6 and 1-7 to Atmos are reasonably calculated to lead to the discovery of admissible evidence related to Mr. Dygert's testimony and are relevant to this proceeding if his testimony is allowed. LCRA TSC respectfully moves to compel Atmos to produce responses to the pending requests within three days of the issuance of an order granting this motion and for such other and further relief to which it may be justly entitled.

Respectfully submitted,



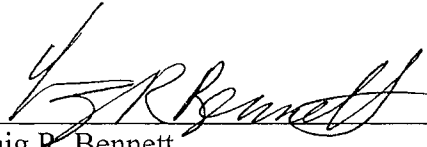
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**ATTORNEYS FOR LCRA TRANSMISSION  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on counsel for Atmos via facsimile on this date, December 6, 2018, in accordance with SOAH Order No. 1 issued in this docket.

  
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Craig R. Bennett