



Control Number: 51023



Item Number: 628

Addendum StartPage: 0

direct reference to a published article in a noted journal. The witness makes no claim to authorship nor interpretation of that article. The statement offers no opinion on the value of the witness's property or that of his neighbors. The statement merely says the article exists. It cannot be expert testimony because the statement does not rely on any specialized knowledge, skill, experience, training, or education. See *Reid Rd. MUD v. Speedy Top Food Stores*, 337 SW3d 846, 851-52 (Tex. 2001) (what constitutes expert testimony). It simply does not fall into the category of testimony, i.e. the Property Owners Rule, relevant to the objection cited. It is neither expert testimony nor testimony under the Property Owners Rule. CPS has lodged a blend of objections that are incongruous to each other and the cited testimony in the hopes that the objections become indecipherable one from the other.

The statement is an affirmative statement of what exists. It is verifiable, and the predicate was laid. It cannot be speculative because it is not the witness's conclusion, opinion, or subjective belief, but a direct statement of fact based on his personal act. It is not offered for the truth of the matter asserted, but as predicate to the witness's ultimate opinion on the impact of the transmission line to he and his wife should it be built directly behind their home. That opinion, that a loss in value of the type reported would be catastrophic to the witness, and its predicate, the reference to the article, is exactly the type of lay opinion allowed under Rule 701. It is "rationally based on the witness's perception, and ... helpful to clearly understanding the witness's testimony...". TRE 701.

If it is found to be an opinion on property value, then it is not only admissible under the Property Owner Rule, it is *required*. *Natural Gas Pipeline Co. of Am. V. Justiss*, 397 S.W.3d 150 (Tex. 2012) (defining Property Owner Rule). The Property Owner Rule arises out of Texas Rule of Evidence 701. *Id.* The Property Owner Rule is an exception to the

requirement that a witness must otherwise establish his qualifications to express an opinion on both land values and diminished values. *Id. at 157*. Under the Rule, the landowner's testimony fulfills the same role that expert testimony does, *without the need for the expert's qualifications. Id.* Like any expert testimony, it may be based on hearsay. *Id. at 157-8*. Therefore, Applicant's objection that the statement is expert testimony for which no predicate for the witness's qualifications has been laid is self-defeating. Under the Property Owner Rule, no qualifications are necessary other than that the witness confirm ownership of the subject property. See page 6, line 4-17, Cichowski Direct Testimony and Motion to Intervene, filing number 194, establishing ownership.

Although no special qualifications are required for a homeowner to offer value testimony, he must provide the factual basis of his opinion. *Natural Gas Pipeline Co. of Am. V. Justiss*, 397 S.W.3d @ 159. This is a particularly light burden. *Id.* "Evidence of price paid, nearby sales, tax evaluations, appraisals, *online resources*, and any other relevant factors may be offered to support the claim". *Id.* (emphasis added). Thus the article referenced as a basis of the witness's opinion is a necessary prerequisite to offering the opinion of the type specifically approved by the Supreme Court of Texas.

This objection should be overruled.

2. **Testimony:** Page 14:23 – 15:1

"CPS is a governmental entity that used its leverage and power to silence the voice of one of the most influential landowners in this proceeding."

Objection: Lacks predicate, not based on personal knowledge, mischaracterizes the record, relevancy.

Response: In the record of this proceeding is the route map presented to the public by CPS Energy in the fall of 2019. In the record is also the testimony of Tom Dreiss (Document No. 557). The record reflects that the original route map had a proposed line bisecting the Pecan Ranch subdivision being developed by Toutant Ranch and others. This is in the testimony of Tom Dreiss. Toutant Ranch et al had invested millions of dollars in this development whose character would have been destroyed by proposed Segment 42. This is in the record from the Dreiss testimony. Dreiss approached CPS in late 2019 to try and negotiate a “land for route location” deal to save his development. This is reflected in the e-mail correspondence produced by Toutant and CPS in this proceeding. In March of 2020, CPS received a letter from the Army regarding proposed segment 12 which, CPS believed, eliminated that segment from consideration for this project, and with it any northern route that did not utilize Toutant Beauregard at some point. CPS admitted this at the Route Adequacy hearing. Shortly after that, “late summer/early spring 2020” according to Dreiss, he again met with CPS to try to negotiate a rerouting of the proposed lines through his property. This time he was partly successful in that a modification was made that did not go straight through several lots. According to Dreiss however, the uncertainty of having a 138kV transmission line weaving through his development had stymied sales and the group sought further concessions. Again this is in the record. The result was a complete modification of the route which resulted in CPS Energy’s amended application. This is part of the record of this proceeding. In order to secure this however, CPS extracted a number of financial and other considerations out of Toutant Ranch and its partners. This is not in question. It is in fact Exhibit 1 to Tom Dreiss’s testimony. The document speaks for itself. Particularly Paragraph 5 which prohibits the Toutant Ranch

group form supporting or advocating for *any* route that does not utilize the modified segments identified in the agreement.

CPS Energy's objection that the testimony lacks predicate is frivolous. It is in the record they helped create. It is laid by the testimony and evidence produced in this proceeding. It is not a valid objection to admissibility that CPS simply prefer it not be pointed out. As to personal knowledge, I have seen the referenced agreement and read the Dreiss testimony which is part of the record of this proceeding. As noted in my testimony, discussions and negotiations with the Toutant Ranch parties have proved fruitless *because* of the agreement. Furthermore, "(e)vidence to prove personal knowledge may consist of the witness's own testimony." T.R.E. 701. My filed testimony sets out my involvement with this case since its inception including early meetings with the Toutant Ranch representative as well as the CPS representative.

As to the objection of mischaracterization, the statement objected to is a lay opinion "*rationaly based on the witness's perception*" and falls squarely within the purview of Texas Rule of Evidence 701. While the trier of fact, in this case the ALJ's, can determine whether the conclusions drawn from the available evidence is reasonable, simply because CPS looks at the record and draws a different conclusion does not support striking the evidence or a claim of mischaracterization. Nor does the fact that it does not care for the characterization constitute a valid objection absent other legal predicate.

Finally, it is relevant because the ALJ's will be called upon to not only hear all of the evidence, but to weigh its credibility. The ALJ's are entitled to know all the background facts of any testimony that may be received, *as well as any lack of testimony*. The silence

of a party, in this case one of the largest impacted landowners, should not be construed as consent.

This objection should be overruled.

3. **Testimony:** Page 20, Line 7 – Page 22, Line 21

Various Constitutional Challenges

Objection: Relevancy

Response: The law is unclear on what remedies need to be exhausted in this proceeding in order to preserve the right of a litigant to seek redress in the District Court. For instance, in *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993), the plaintiff's first sought relief on their constitutional claim over one of the agency's rules in the administrative proceeding, before seeking relief in the District Court. While there does not appear to be a mechanism in place in this proceeding to raise these issue, prudence suggest doing so and asking the ALJ's to rule on them. Intervenor respectfully request that the objections to this testimony be overruled.

Respectfully submitted,

By: *Steve Cichowski*

Steve and Catherine Cichowski
Steve Cichowski TBN # 00793507
24914 Miranda Ridge
(210) 225-2300
(210) (fax)
steve@cichowskilaw.com

INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March 2021, notice of the filing of this document was provided to all parties of record via the PUC Interchange in accordance with SOAH Order No. 3.

Steve Cichowski

Steve Cichowski