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**APPLICATION OF ONCOR
ELECTRIC DELIVERY COMPANY,
LLC TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY
FOR THE KRUM WEST TO ANNA
345-KV CREZ TRANSMISSION LINE
IN COLLIN, COOKE, DENTON, AND
GRAYSON COUNTIES**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

**ONCOR ELECTRIC DELIVERY COMPANY LLC'S REPLY TO
BLUEGREEN COMMUNITIES OF TEXAS, L.P.'S OBJECTIONS TO THE DIRECT
TESTIMONY OF APPLICANT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE CRAIG R. BENNETT:

COMES NOW Oncor Electric Delivery LLC ("Oncor") and files this Reply ("Reply") to Bluegreen Communities of Texas, L.P.'s ("Bluegreen") Objections to the Direct Testimony of Applicant ("Objections").

I. BACKGROUND

Pursuant to Order No. 5, objections to the Applicant's direct testimony were due on October 22, 2010. Bluegreen filed their objections to Oncor's direct testimony on October 25, 2010 (see item # 1602). In addition, pursuant to Order No. 2, among other requirements, a party must be served with any motion. Oncor does not believe it was served with Bluegreen's Objections. On October 29, 2010, Oncor filed its reply to the Walton's objections to the direct testimony of Charles T. Jasper (item # 1722). Notwithstanding the untimely objections of Bluegreen, Oncor now files its reply to those objections.

II. ARGUMENT

Bluegreen's Objections should be overruled for the following reasons. First, Bluegreen's objections are untimely. Bluegreen filed their objections after the deadline established in Order No. 5. Second, as required by Order No. 2, Oncor does not believe it was served with Bluegreen's Objections. Third, with respect to the merits of Bluegreen's Objections, Bluegreen offers only one generic objection to the direct testimony of all four Oncor witnesses (Mr. Jasper, Mr. Marusak, Mr. Donohoo and Ms. Alvarez). In particular, Bluegreen objects to their direct testimony "to the extent such direct testimony contains legal conclusions." Objections at 1-3.

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Bluegreen fails to specify what specific testimony it finds objectionable nor does Bluegreen offer any explanation as to how this direct testimony constitutes legal conclusions. Regardless, the direct testimony of all four Oncor witnesses is proper. Mr. Jasper, Mr. Marusak, Mr. Donohoo and Ms. Alvarez all offer both fact and expert testimony in their direct testimony in this docket. For example, Mr. Jasper offers fact and expert witness testimony explaining his selection of the preferred and alternative routes to be filed with Oncor's application based on the relevant routing factors, and gives his opinion that the routes he selected are adequate for the Commission to conduct a proper evaluation. Such testimony is not objectionable. The law is clear that, as a qualified expert, Mr. Jasper may offer opinion on mixed questions of fact and law, such as whether certain routes in Oncor's Application meet the standards set by law. TEX. R. EVID. 704 ("Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."); *see also Birchfield v. Texarkana Mem'l Hosp.*, 747 S.W.2d 361, 365 (Tex. 1987) ("Fairness and efficiency dictate that an expert may state an opinion on a mixed question of law and fact as long as the opinion is confined to the relevant issues and is based on proper legal concepts"). Similarly, Mr. Marusak's testimony does not constitute improper legal conclusions. For example, Mr. Marusak in his direct testimony opines that the routes included in the Application are consistent with the applicable provisions of PURA and the Commission's Substantive Rules. This is not an opinion on an issue of law, but rather an opinion involving a mixed question of law and fact. The same is true with respect to Ms. Alvarez's testimony that Oncor provided notice of the filing of this project as required by the Commission's procedural rules. Again, there is no question that under the Texas Rules of Evidence, experts may testify on mixed questions of law and fact. Finally, it is worth noting that all four witnesses have offered direct testimony in numerous Commission proceedings that is not materially different in form, content, organization, or detail from their prior direct testimony that has been admitted into evidence by the Commission in those proceedings. To cite just one example, Mr. Jasper's direct testimony has been admitted into evidence in nearly 18 different CCN proceedings.¹

¹ For the reasons stated in Oncor's reply to the Walton's Objections (see Item #1722), Bluegreen's "incorporation" of the objections made by "other parties" fails for the reasons set forth in that reply.

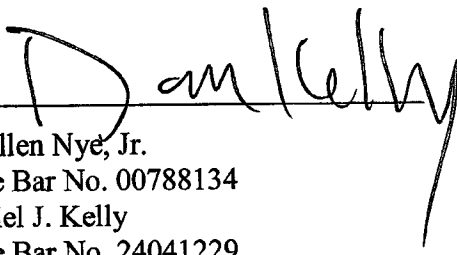
III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Oncor prays that Blueegreen's objections be overruled and Oncor be granted such other and further relief, not inconsistent herewith, to which it is justly entitled.

Respectfully submitted,

VINSON & ELKINS LLP

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**ATTORNEYS FOR ONCOR ELECTRIC
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing has been served in accordance with Order No. 2 in this matter on this the 1st day of November, 2010.

