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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 §

PUBLIC UTILITY COMMISSION
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**CITY OF MCKINNEY'S REPLY TO COMMISSION STAFF'S OBJECTIONS TO AND
MOTION TO STRIKE CERTAIN PORTIONS OF INTERVENORS' DIRECT
TESTIMONY**

The City of McKinney ("City" or "McKinney") files its Reply to Commission Staff's ("Staff") Objections to and Motion to Strike Certain Portions of Intervenors' Direct Testimony. In accordance with SOAH Order No. 4, this Reply is timely filed.

Commission Staff filed objections to and seeks to strike the direct testimony of several intervenor witnesses, including City of McKinney witness Jennifer Arnold. Staff's specific objections and the precise testimony sought to be struck are listed on Page 2 of its Objections. The rationale for striking these portions of Ms. Arnold's direct testimony is that the testimony concerns the future use of property and the devaluation of property and as such are irrelevant.

The City urges the Administrative Law Judges ("ALJs") to overrule Staff's objections and deny Staff's motion to strike Ms. Arnold's direct testimony for the following reasons. First, Ms. Arnold's testimony concerning the future development of land within the City of McKinney along the State Highway 121 ("HW 121") corridor should be viewed in the context of the City's comprehensive agenda to develop the HW 121 corridor. As Ms. Arnold testifies, the City's actions to protect the corridor for eventual development began back in 2001 and entail the completion of long-range planning studies, adoption of development codes and the execution of economic development incentive agreements all in connection with the City's Comprehensive Plan.¹ In adopting a Comprehensive Plan, the City has exercised its statutory right to provide for the sound development of the City and to promote public health, safety and welfare.² The City's efforts in this regard are long-standing and all-encompassing. The City's concerns with future

¹ Direct Testimony of Jennifer Arnold ("Arnold Direct") at 3, lns. 12-16.

² Tex. Util. Code § 213.001.

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development in the HW 121 corridor are unlike those often raised by landowners in transmission line certification cases, which are many times based on entirely hypothetical concerns about future development and decreased land value. The City's Comprehensive Plan and related development plans, in contrast, actually exist. The City's concerns stand in stark contrast to the sort of wildly speculative future plans that should rightfully not be made part of the evidentiary record.

Second, the testimony that Staff seeks to strike is relevant to community values. Community values are a criterion to be considered under PURA in determining whether the Commission should approve a transmission certification application.³ The City's Comprehensive Plan is a reflection of the City's policy for development, which itself is an expression of the community's values concerning development. Indeed, Ms. Arnold provides direct testimony explaining how the proposed transmission line and substation sites 3 and 4 would adversely affect community values in McKinney.⁴

Third, Ms. Arnold is an expert witness and her testimony should not be struck under TRE 702 and 703.⁵ Ms. Arnold is employed as the City of McKinney's Planning Manager and has a Master's Degree in Urban and Regional Planning.⁶ Ms. Arnold began her career in urban and regional planning approximately one decade ago.⁷ Ms. Arnold's testimony concerns the highly complex and detailed areas of land use regulation, city planning and economic development. In arriving at her ultimate opinion that a transmission line and substation should not be located in the City, Ms. Arnold reasonably relied on the adverse impact that a transmission line and substation would have on the future development and decreased property values within the City. Therefore, her testimony should still not be struck under TRE 702 and 703.

³ PURA § 37.056(c)(4)(A).

⁴ Arnold Direct at 5, ln. 1-14.

⁵ TRE 702 states that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an expert opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." TRE 703 states that "An expert may base an opinion on facts or data in the case in the case that the expert has been made aware of, reviewed, or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted."

⁶ Arnold Direct at 1, lns. 9-10 and Exhibit JA-1.

⁷ *Id.* at 1, lns. 11-15 and Exhibit JA-1.

The City of McKinney, therefore, respectfully requests that the ALJs overrule the Staff's Objections and deny the Staff's Motion to Strike portions of Ms. Arnold's direct testimony.

Respectfully submitted,

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**ATTORNEYS FOR THE CITY OF
MCKINNEY**

CERTIFICATE OF SERVICE

I hereby certify that on this the 17th day of May 2017, a true and correct copy of the *City of McKinney's Reply to Commission Staff's Objections to and Motion to Strike Certain Portions of Intervenors' Direct Testimony* was served upon all parties of record as required by SOAH Order No. 1.

By:  _____

Brennan J. Foley