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APPLICATION OF BRAZOS §  
ELECTRIC POWER COOPERATIVE, §  
INC. FOR AMENDMENT TO ITS §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY FOR A 138-KV §  
TRANSMISSION LINE IN COLLIN §  
COUNTY §

PUBLIC UTILITY  
COMMISSION OF TEXAS

**AMHERST CAPITAL INVESTMENTS, LLC'S AND TEXAS PARTNERS  
IN CAPITAL INVESTMENTS, LLC'S RESPONSE TO COMMISSION STAFF'S  
OBJECTIONS AND MOTION TO STRIKE PORTIONS OF CERTAIN  
INTERVENORS' DIRECT TESTIMONY**

The Commission Staff objects to portions of the following direct testimonies filed in support of Amherst Capital Investments, LLC's and Texas Partners in Capital Investments, LLC's (collectively, "Intervenors") statement of position.

1. Ronald H. Hobbs, AIA
2. Ronald A. Duperroir
3. Erin Brook Bishop<sup>1</sup>
4. Baber Younas, MD

To each of these testimonies, the Commission Staff made the blanket objection that the specified testimony was not relevant or, alternatively, speculative because it was discussing Intervenors' development plans for the affected property. The Commission Staff considers this to be discussions of future use, which assumingly are "too indefinite as to where or how potential routing areas will be affected and, as such, are irrelevant to the Commission's decision." Staff's Objection and Motion to Strike, p.6 (citing *Application of LCRA Transmission Servs. Corp. to Amend its*

<sup>1</sup> The Commission Staff mistakenly referred to her as Erin Brooke Baber.

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*Certificate of Convenience & Necessity for a 138-kV Transmission Line in Kendall and Bexar Cnty.*, Docket No. 29684, Order on Rehearing at 4 (Mar. 22, 2006)).

The Commission Staff's objections cannot be sustained and the motion to strike these portions must be denied. The descriptions and direct testimony related Intervenor's extensive planned development is (1) relevant as to PUC's additional factors such as community values and aesthetic values, and (2) not "too indefinite" as to be considered speculative.

### **ARGUMENTS & AUTHORITIES**

#### **A. The Testimony is Relevant to the Applicable Factors**

Brazos' Application can be granted by the Commission "only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) 37.056." 16 TAC 25101(b); *see also*, PUC December 7, 2016 Order of Referral and Preliminary Order at p. 4. The mission is "to assure the availability of safe, reliable, high quality services that meet the needs of all Texas at just and reasonable rate." 16 TAC 25.1(a).

The Commission is to consider various factors when deciding whether to grant a CCN application. Some of these factors are (1) "community values"; "recreational and park areas"; (3) "historical and aesthetic values"; and (4) "environmental integrity". Tex. Util. Code 37.056(c). Commission regulations state that an application for a CCN "shall address the criteria in PURA 37.056(c) and, considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners. 16 TAC 25.101. "None of the statutory factors is intended to be absolute in the sense that any one shall prevail in all possible circumstances." *Pub. Util. Comm'n of Texas v. Texland Elec. Co.*, 701 S.W.2d 261, 267 (Tex.App.—Austin 1985, writ ref'd n.r.e.). These factors are stated in the broadest possible terms and are intended as legislative standards to guide the Commission in its

administration of the certification process. *Hammack v. Pub. Util. Com'n of Texas*, 131 S.W.3d 713, 722–23 (Tex. App.—Austin 2004, pet. denied) (citing *Public Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.—Austin 1985, writ ref'd n.r.e.)) The Commission must therefore consider and weigh all of the factors when “determining the most reasonable route for a transmission line....no one factor controls or is dispositive.” *Dunn v. Pub. Util. Comm'n of Texas*, 246 S.W.3d 788, 796 (Tex.App.—Austin 2008, no pet.).

As there is no definition of “community values” or “aesthetic value” and the terms are to be considered in the “broadest possible terms”, the direct testimonies of Hobbs, Duperrior, Bishop, and Baber are directly relevant to these factors. For example, McKinney’s zoning for the affected property reflects McKinney’s community values. Therefore, Hobbs’ testimony as to the Regional Employment Center (“REC”) zoning of the affected properties and the planned development was “developed in direct response to these principles” is relevant to the “community value” factor.

Direct Testimony of Ronald H. Hobbs, at pp.3-5. Hobbs’ goes on to state:

12 Q. How would the planned substation affect community values, historical or aesthetic  
13 values?

14 A. The City of McKinney’s “REC” zoning was developed based upon the City’s desire to  
15 enhance community values and improve the environment that its citizens live in. It is based  
16 on bringing things together and preventing the environment from becoming fragmented. A  
17 substation in this location destroys the continuity that is needed. It will be a barrier in the  
18 middle of the community.

Direct Testimony of Ronald H. Hobbs, p.7. Duperrior’s, and Baber’s direct testimonies also describe how the planned development fits within these zoning regulations by providing medical facilities, retail, a health club, apartments and office space. These direct testimonies additionally

describe the benefits the planned development would provide for the community and how it would negatively impacted by the placement of Substation 3.

Additionally, the descriptions of the development and exhibits show the extensive plans to beautify the corner of Alma Road and State Highway 121. Exhibits 2, 3, and 5 attached to the Direct Testimony of Erin Brooke Bishop show how the substation would negatively impact the planned development is directly relevant to the aesthetic values this Commission must consider.

In short, the objected-to portions of direct testimony the Commission Staff are directly relevant to the factors in Tex. Util. Code 37.056(c).

**B. Intervenor's Definitive Plans**

As stated in the sworn testimony, these development plans are far from indefinite. Dr. Younas and Mr. Hobbs have been planning this development since May 2015—far before Brazos gave notice of the initial proposed routes. Direct Testimony of Ronald H. Hobbs, at p.7. For example, Duperrior speaks of extensive planning with the development time and the City of McKinney:

- 1 **Q. Have you and Dr. Younas worked with the community in developing this land?**  
2 **A. Yes. We have had numerous meetings with City of McKinney officials, developers and**  
3 **other nearby property owners regarding the united vision for developing this land. We**  
4 **deliberately sought out the land and came up with a deliberate plan. We have worked many**  
5 **hours on the site plan, have had coordination meetings, investor meetings and spent many**  
6 **thousands of dollars, as you can see in the attached Exhibit 1. Had we known or even**

Direct Testimony of Ronald A. Duperrior, at p.4.

These confirmed plans are corroborated Hobbs', the architect heading the development, testimony and the attached exhibits. He stated:

- 16 Q. In addition to what you have designed, what else has been done to get this property  
17 ready for development (zoning, platting, dividing, approvals, utilities, etc.)?
- 18 A. We had numerous preliminary meetings with our consulting engineers and had worked out  
19 contracts with our civil engineering consultant to proceed with the platting process and site  
20 utility design. However, due the uncertainty of the substation, the work was stopped during  
21 the preliminary phases. Cross Engineering sent us a layout and cost estimate for the utilities  
22 they had previously completed for the site. They also did a preliminary layout and cost  
23 estimate for site utilities based upon our master plan.

Direct Testimony of Ronald H. Hobbs, at p.6.

Intervenors further adopt the applicable arguments and authorities contained in City of McKinney's Reply to Commission Staff's Objections to and Motion to Strike Certain Portions of Intervenors' Direct Testimony.

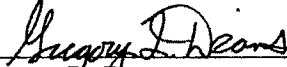
The Commission Staff's blanket objection that testimony regarding the planned development is speculative and indefinite is incorrect, and therefore, the objection must be overruled.

### CONCLUSION

In conclusion we ask the ALJ to deny the Staff Commissions Objections and Motion to Strike as related to the direct testimonies in support of Amherst Capital Investments, LLC's and Texas Partners in Capital Investments, LLC's Joint Statement of Position.

Respectfully submitted,

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**ATTORNEYS FOR INTERVENORS AMHERST  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document was served on all parties of record on May 17, 2017, in accordance with Public Utility Commission Procedural Rule 22.74 and SOAH Order No. 1.



Gregory L. Deans