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APPLICATION OF THE CITY OF SAN ANTONIO TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE SCENIC LOOP 138-KV TRANSMISSION LINE IN BEXAR COUNTY § BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS § § § § § § §

STATE OFFICE OF ADMINISTRATIVE HEARINGS
FILING CLERK

CPS ENERGY’S RESPONSE TO ANAQUA SPRINGS’ OBJECTIONS AND MOTION TO STRIKE PORTIONS OF CPS’ DIRECT TESTIMONY

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files this Response to the Anaqua Springs Homeowners’ Association (Anaqua Springs HOA) Objections and Motion to Strike Portions of CPS’ Direct Testimony (the Motion to Strike). This Response is timely filed.

I. DIRECT TESTIMONY OF LISA MEAUX

Ms. Lisa Meaux (Ms. Meaux) filed direct testimony in this proceeding to introduce, support, sponsor, and describe the *Scenic Loop 138 kV Transmission Line and Substation Project Environmental Assessment and Alternative Route Analysis Bexar County Texas* (the EA). Ms. Meaux is employed by POWER Engineers, Inc. (POWER). CPS Energy retained POWER to perform and prepare an EA for the proposed transmission line relevant to this proceeding and Ms. Meaux served as the Project Manager, which involved overseeing and participating in the preparation of the EA.

As part of her direct testimony, Ms. Meaux described how and when in the process POWER utilized the comments and information from governmental agencies and local officials.¹ As part of her response, Ms. Meaux describes a conflict over a potential segment referred to as “Segment 12,” which was removed from consideration after receipt of a letter from the Department of the Air Force and the Army dated March 26, 2020 (the Air Force and Army Letter).² The letter is included in Appendix A of the EA.

¹ *Application of the City of San Antonio Acting by and through the City Public Service Board (CPS Energy) to Amend its Certificate of Convenience and Necessity for the Proposed Scenic Loop 138-kV Transmission Line, Docket No. 51023, Direct Testimony of Lisa Meaux at 9 (Nov. 6, 2020).*

² Direct Testimony of Lisa Meaux at 10 (Nov. 6, 2020).

In the Motion to Strike, Anaqua Springs HOA objects and moves to strike the following portion of the direct testimony of Ms. Meaux:

“In the letter, the Airforce and Army, who hold a third-party beneficiary interest in the property crossed by Segment 12, stated that they were opposed to the granting of an easement for the project across the Bandera Pass Easement.”

Specifically, Anaqua Springs HOA objects to this portion of Ms. Meaux’s testimony on two grounds: first, the use of the word “opposed” and second, because they claim that the easement document should govern the rights of the Air Force and Army, not the letter to CPS Energy.³

The Air Force and Army Letter states “it is the Air Force’s and Army’s position that the proposed [right-of-way] ROW would be inconsistent with the conservation easement over the Maverick Ranch that the Army’s conservation partner, The Nature Conservancy (TNC), acquired in 2010. . . . In addition, a ROW for an electric transmission line would negatively impact the ongoing military missions at Camp Bullis.”⁴ The Air Force and Army Letter then goes on to explain the impacts and potential problems that TNC would experience if the perpetuity conservation easement was to be disturbed.⁵ Additionally, the Air Force and Army Letter says they have “been in communication with the owners of the underlying fee title of the Maverick Ranch as well as TNC, and both are *resistant* to a utility ROW over the Maverick Ranch.”⁶ Therefore, while the word “opposed” is not literally used in the Air Force and Army Letter, Ms. Meaux’s conclusion that the Air Force and Army are opposed to a disturbance to the conservation easement is reasonable based on the language of the letter and Ms. Meaux’s personal qualifications and experience as a routing expert. Ms. Meaux’s statement is not offered as a legal conclusion, but instead offering only her expert opinions on the various routing options that were considered by CPS Energy.

Ms. Meaux is offered as an expert witness and has significant training and experience in routing and environmental matters. Pursuant to Texas Rule of Evidence 702, “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion.” Ms. Meaux is clearly well-qualified to offer such opinions. She has provided environmental planning and consulting services for electric transmission line projects

³ Anaqua Springs’ Objections and Motion to Strike Portions of CPS’ Direct Testimony at 1 (Nov. 13, 2020).

⁴ Air Force and Army Letter at 1 (Mar. 26, 2020).

⁵ Air Force and Army Letter at 2 (Mar. 26, 2020).

⁶ Air Force and Army Letter at 2 (Mar. 26, 2020) (emphasis added).

for over 22 years and has now managed over 45 routing and environmental impact analyses for electric transmission line projects in Texas and other states, as well as assisted in other capacities on 30 additional transmission line projects.⁷ Moreover, Ms. Meaux has testified as an expert in numerous other cases before the Public Utility Commission of Texas (Commission), as detailed on page 4 of her direct testimony. Thus, while Ms. Meaux is prohibited from reaching legal conclusions, she is permitted to opine upon the routing criteria and considerations relevant to this proceeding based on her expertise. Testimony regarding her understanding that the Air Force and Army are opposed to disturbance of the conservation easement constitutes a permissible opinion based on her significant experience in transmission line routing, a clear reading of the Air Force and Army Letter, and the language of the easement document.

The Motion to Strike also argues that the easement document should govern the rights of the Air Force and Army, rather than the Air Force and Army Letter to CPS Energy. The easement document referred to here is the conservation easement in favor of TNC, which was recorded in Plat Book 14688, Pages 1864 to 1913 of the Official Public Records of Bexar County, Texas on October 18, 2010 (the Conservation Easement). The Conservation Easement was funded by the Army and therefore, provided the Army with certain third-party contingent rights. Most notably, with regard to condemnation, the Conservation Easement specifies that **“Due to the Army’s interest in this Conversation Easement, this Conservation Easement cannot be subject to a condemnation action without the Army’s prior consent.”** Easement 17(b) (emphasis added). Further, the Conservation Easement also provides that the Army shall have enforcement rights over the Conservation Easement. Easement 7.8. Further, any amendment to the Conservation Easement requires written consent of the grantor, grantee, and the Army. Easement 16. Therefore, given the rights of the Army with regard to the Conservation Easement, the Air Force and Army Letter, which provides the Army’s input on any disturbance to the Conservation Easement on behalf of itself and TNC, is satisfactory to govern the rights of the Air Force and Army.

II. CONCLUSION

For the reasons provided herein, CPS Energy respectfully requests that the Administrative Law Judges deny Anaqua Springs HOA’s Objections and Motion to Strike Portions of CPS’ Direct Testimony.

⁷ Direct Testimony of Lisa Meaux at 3 (Nov. 6, 2020).

Respectfully submitted,

/s/ Kirk D. Rasmussen

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ATTORNEYS FOR CPS ENERGY

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with the Commission's order in Docket No. 50664 suspending PUC Procedural Rule 22.74.

/s/ Kirk D. Rasmussen

Kirk D. Rasmussen