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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	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION'S RESPONSE TO BEXAR RANCH ET AL. OBJECTIONS TO MOTION TO STRIKE TESTIMONY OF SUNIL DWIVEDI, M.D., AND JOINT RESPONSE TO MOTION TO STRIKE TESTIMONY OF MARK D. ANDERSON

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") and Brad Jauer/BVJ Properties, LLC ("Jauer") files this Response to the Objections and Motion to Strike testimony of Anaqua Springs HOA's witnesses Sunil Dwivedi, M.D., and Mark D. Anderson. Anaqua Springs HOA's Response with respect to Mr. Anderson's testimony is joined by Brad Jauer and BVJ Properties, LLC. Objections to Dr. Dwivedi's testimony were filed on February 23, 2021 and to Mr. Anderson's on February 25, 2021. Therefore, this response is timely filed.

I. THE PROFFERED TESTIMONY IS RELEVANT

The Movants have asked that all testimony regarding Route R1 Modified be struck because the testimony is not relevant. They make no other objection to the testimony. Anaqua Springs HOA propounded discovery on CPS Energy regarding the proposed modifications on Segments 38 and 43, which are referred to as Segments "38a" and "43a" in the testimony of Sunil Dwivedi, M.D., and Mark D. Anderson. CPS Energy did not object to the discovery on any basis, including relevance. Evidence at a hearing is relevant when it has any tendency to make a fact more or less

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probable than it would be without the evidence and the fact is of consequence in determining the action.[1]

Anaqua Springs HOA opposes Route R1, especially Segments 38 and 43 because it unnecessarily impacts three habitable structures within the Anaqua Springs subdivision. Rather than continuing straight on a southwesterly trajectory along Segment 38 -- which passes through undeveloped land, Route R1 and Segment 38 inexplicably angle up to the northwest to run along and within 300 feet of three existing, occupied homes before turning back down again to the southwest, again through undeveloped land.

Anaqua Springs HOA recognizes that Route R1 (unmodified) has some attractive features, including but not limited to avoiding Sara McAndrew Elementary and the large number of habitable structures on Toutant Beauregard. However, Anaqua Springs HOA does not and cannot support Route R1 (or any other route utilizing Segments 38 and 43) because of the unnecessarily impacted habitable structures within the subdivision. In an effort to find a route agreeable to many intervenors and to narrow the issues for the Administrative Law Judges ("ALJs"), Anaqua Springs HOA devoted significant time and resources to propose a modification and file relevant expert and lay testimony regarding a route that is agreeable not only to Anaqua Springs HOA but also to numerous other parties (*See* Joint Request for Certified Issues). The proposed modifications reduce the total number of impacted habitable structures and make Route R1 Modified less expensive than Route R1. This information is relevant to the ALJs and the Commission who must determine which route best meets the statutory criteria. Route R1 Modified has the lowest habitable structure count of any route, it is one of the least expensive routes, and it is agreeable to enough parties that if it were considered by the ALJs, the case has the potential to be simplified.

[1] Tex. R. Evid. 401.

II. MOVANTS' COMPLAINTS DO NOT WITHSTAND SCRUTINY

The Movants argue that Route R1 Modified cannot be relevant because it is not identified, not evaluated, not studied, not included in the application, and not noticed. They also note that they have not consented to Segments 38a and 43a.

Anaqua Springs HOA has asked CPS Energy to evaluate the proposed modification both informally and formally through discovery to no avail.[2] Anaqua Springs HOA's expert Mr. Anderson has evaluated the route himself. Therefore, the route is identified and has been evaluated.

The proposed modifications are not required to be noticed. The Commission has issued a brochure entitled, "Landowners and Transmission Line Cases at the PUC." The brochure must be included in the notice sent to landowners. Page 3 of that brochure under the section titled "Application to Obtain or Amend a CCN" states, "In addition to the routes proposed by the applicant in its application, the possibility exists that additional routes may be developed, during the course of a CCN case, that could affect property in a different manner than the original routes proposed by the applicant." The Commission's brochure anticipates that there may be changes to routes impacting property in a different manner than the original filed routes.

The Commission's procedural rule on landowner notice also anticipates that routes may be modified. Before final approval of any modification in a route, a utility must provide notice to the landowner only if that landowner has not been noticed.[3] There is no legal requirement for the utility to obtain landowner consent prior to a modification. CPS has applied this rule with its Segment 26a modification. It did not notice the newly-impacted landowners because they had already been provided notice under 16 Tex. Admin. Code ("TAC") § 22.52.

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[2] Anaqua Springs HOA has filed a motion to compel answers to discovery.

[3] 16 TAC § 22.52(a)(3)(C).

Based on their own prefiled testimonies, it is clear that the Movants do not support any route on their properties. They do not indicate that the modifications are worse than the unmodified routes. They provide no valid reason why those modifications should not be considered, other than that they do not consent. They also do not consent to Route R1 as filed, as indicated in their testimonies.

There is nothing in the Public Utility Regulatory Act ("PURA") or the Commission's rules that specifically prohibits a landowner from proposing a modification on another landowner's property. In this case, there are three homes directly impacted (less than 300 feet) Route R1.[4] By modifying Segments 38 and 43, the impact to those homes is mitigated. The Movants have pointed to nothing that makes Route R1 Modified any less desirable to them than Route R1. And they likely cannot. They do not want the route on their property no matter where it goes. But the route has to go somewhere. Route R1 Modified represents a concerted effort among many parties to create a route that balances the interests of those parties. Segments 38a and 43a do not impact any habitable structures on Movants' properties. They do not impact any landowners who are not participating in this case. The Movants have been noticed and are participating.

The Movants also complain that Anaqua Springs HOA requested a route adequacy hearing and did not include this route as part of the route adequacy motion. That is correct, but it was not, as implied by Movants, an attempt to surprise the parties.[5] In fact, as the ALJs will recall, CPS notified the parties of the need to move Segment 26 the morning of the route adequacy hearing, because a house had been constructed directly under Segment 26 within the Canyons of Scenic Loop subdivision (the property owners association and landowners of which are primary members of Save Huntress Lane Area Association, which co-filed the Motion to Strike to which this

[4] The changes to Segments 38 and 43 between the open house and the filed application were made without notice or consent of the impacted homeowners in Anaqua Springs

[5] Movants did not object to unfair surprise

response pertains),[6] Segment 26 also is a segment included in Route R1, and it also is modified in Route R1 Modified. If R1 Modified were ultimately approved, Clearwater Ranch would actually have less line routed over their property because the proposed modification turns west sooner than Route R1.

In short, Route R1 Modified and the modifications of Segments 26a, 38, and 43 were developed after the route adequacy hearing. They came about as a result of lengthy discussions among some of the participating landowners in this case in an effort to find a route that would be agreeable to parties impacted by routes along Toutant Beauregard. As can be seen from the testimony of Steve Cichowski, he recommends Route W with R1 Modified as an alternative he is willing to accept.

Movants are not prejudiced by the proposed modification. They have an opportunity to file cross rebuttal testimony regarding the modification. If R1 Modified were ultimately approved, Clearwater Ranch would actually have less line routed over their property because the proposed modification turns west sooner than Route R1.

The objection to the modification is really not an objection to the modification but is instead an objection to the perceived increased likelihood that Route R1 Modified would be approved if the modification is considered. No party in this case wants the line to run across their property. However, the line will likely be approved and routed somewhere. The proposed modification is agreeable to many intervenors, including intervenors on both the northern and southern routes. Route R1 Modified impacts only 5 habitable structures compared to Route Z1, which impacts over 30.

The Movants cannot and do not argue that the modifications are inferior to the current routing. It would be a difficult argument to make. The modifications move the line away from

[6] *See* "Save Huntress Lane Are Association Motion to Intervene."

three impacted homes into an area where there are no habitable structures. Based upon estimates from Mark D. Anderson, the modifications significantly reduce the cost of that route.

Therefore, Anaqua Springs HOA respectfully requests that the ALJs deny the Motions to Strike. In the alternative, Anaqua Springs HOA respectfully requests that the ALJs reserve ruling on the Motions to Strike until such time as the Commission takes action on the certified issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st 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.

Wendy K. L. Harvel