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APPLICATION OF THE CITY OF SAN § BEFORE THE STATE OFFICE  
ANTONIO ACTING BY AND THROUGH §  
THE CITY PUBLIC SERVICE BOARD §  
(CPS ENERGY) TO AMEND ITS § OF  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY FOR THE PROPOSED §  
SCENIC LOOP 138-KV TRANSMISSION § ADMINISTRATIVE HEARINGS  
LINE §

**BRAD JAUER’S & BVJ PROPERTIES, LLC’S RESPONSE TO THE OBJECTION AND MOTION TO STRIKE BRAD JAUER’S TESTIMONY FILED BY BEXAR RANCH, L.P., SAVE HUNTRESS LANE AREA ASSOCIATION AND CLEARWATER RANCH POA**

Brad Jauer and BVJ Properties, LLC (collectively “Jauer”) file this Response to the Objections and Motion to Strike testimony of Brad Jauer filed on February 23, 2021 as part of the “Objection and Motion to Strike by Bexar Ranch, L.P., by Save Huntress Lane Area Association and by Clearwater Ranch POA to the Testimony Referring to “Route R-1 Modified” (hereinafter the “Motion”). This response is timely filed.

**I. THE PROFFERED TESTIMONY IS RELEVANT**

In their Motion, the Movants (*i.e.*, Bexar Ranch, L.P.; Save Huntress Lane Area Assoc.; and Clearwater Ranch POA) ask that the phrase “..., and why Route R1 Modified best meets those factors” (*i.e.*, “the factors prescribed by law”) be struck from Brad Jauer’s testimony on the basis of “Relevance.”<sup>1</sup> They make no other objection to the testimony.

The phrase in question is part of a sentence outlining the testimony to be provided by Brad Jauer’s expert witness, Mark Anderson. In that regard, it is a factual statement, because Mark Anderson does, in fact, provide testimony as to why Route R1 Modified best meets the factors prescribed by law.

<sup>1</sup> See Motion, Paragraph 8.

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Moreover, Route R1 Modified, the segments that it modifies (*i.e.*, Segments 26a, 38 and 43), and the reasons for the modifications are quite relevant in this matter. Evidence at a hearing “is relevant when it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.”<sup>2</sup>

Anaqua Springs HOA propounded discovery on CPS Energy regarding modifications to Route R1, which included proposed modifications to Segments 38 and 43 (renamed as Segments “38a” and “43a”), as well as a slight modification to Segment 26a.<sup>3</sup> CPS Energy did not object to this discovery on any basis, including relevance.

Route R1 Modified is a significantly better route than Route R1 because it impacts three (3) fewer 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 (unmodified) inexplicably angles Segment 38 up to the northwest to run along and within 300 feet of three (3) existing, occupied homes in the Anaqua Springs subdivision before turning back down again to the southwest, again through undeveloped land. Route R1 *Modified* eliminates this unnecessary impact on the three (3) habitable structures. It also is less expensive.

Route R1 Modified is the result of an effort to find a route agreeable to many intervenors and to narrow the issues for the Administrative Law Judges. Anaqua Springs HOA devoted significant time and resources to propose such a modification and to file relevant expert and lay testimony regarding a route that is agreeable, not only to Anaqua Springs HOA, but also to numerous other parties, including Jauer. (*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

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<sup>2</sup> Tex. R. Evid. 401.

<sup>3</sup> *See* screenshot of “CPS Energy’s Response to Anaqua Springs Homeowners’ Association Third Request for Information” depicted on Page 2 of the Motion.

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.

## 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.

First, relative to notice and any need for consent, there is no legal requirement for the utility to re-notice or obtain landowner consent prior to a modification. The Commission's procedural rule on landowner notice anticipates that routes may be modified and requires notice of a modification *only if* the landowner has not already been noticed.<sup>4</sup> In fact, CPS already applied this rule relative to the Segment 26a modification when it did not notice the newly-impacted landowners because they had already been provided notice under 16 TAC § 22.52. Similarly, there is no legal requirement for the utility to obtain landowner consent prior to a modification. In fact, the PUC's prescribed brochure to landowners, entitled "Landowners and Transmission Line Cases at the PUC," expressly 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."

Moreover, relative to relevance in general, Jauer and Anaqua Springs have asked CPS Energy to evaluate the proposed modification both informally and formally through discovery and

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<sup>4</sup> 16 TAC § 22.52(a)(3)(C).

otherwise to no avail.<sup>5</sup> Their expert Mr. Anderson has evaluated the route himself. Therefore, the route is identified and has been evaluated.

Based on their own pre-filed 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 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 (3) homes directly impacted (less than 300 feet) by Route R1.<sup>6</sup> 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 and Jauer 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.<sup>7</sup> In fact, as the Administrative Law Judges 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

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<sup>5</sup> Anaqua Springs HOA has filed a motion to compel answers to discovery.

<sup>6</sup> 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.

<sup>7</sup> Movants did not object to unfair surprise.

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 response pertains),<sup>8</sup> Segment 26 (as modified as Segment 26a following the route adequacy hearing) 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 that it effectuates were developed after the route adequacy hearing 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.

Movants are not prejudiced by the proposed modification. They have an opportunity to file cross rebuttal testimony regarding the modification. If Route 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.

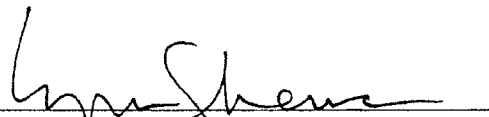
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<sup>8</sup> See "Save Huntress Lane Are Association Motion to Intervene."

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 three impacted homes into an area where there are no habitable structures. Based upon estimates from Mark 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,

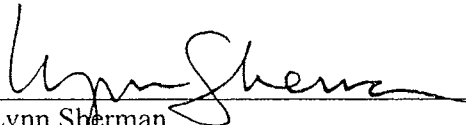
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been filed with the Commission and served on all other parties via the PUC Interchange on this 1<sup>st</sup> day of March 2021, pursuant to SOAH Order No. 3 issued in this docket.

  
Lynn Sherman