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

CPS ENERGY’S OBJECTIONS TO INTERVENOR DIRECT TESTIMONY

COMES NOW the City of San Antonio, acting by and through the City Public Service Board (CPS Energy) and files these objections to intervenor direct testimony. These objections are timely filed under the requirements of SOAH Order No. 8.

I. OBJECTIONS TO ROUTE R1 MODIFICATIONS

Anaqua Springs Homeowners Association (Anaqua Springs HOA) and Brad Jauer and BVJ Properties, LLC (collectively, “Jauer”) filed testimony referring to modifications proposed to Route R1. The prefiled direct testimony of Sunil Dwivedi, M.D. (Interchange Filing No. 502), Mark D. Anderson (Interchange Filing No. 564), and Steve Cichowski (Interchange Filing No. 590) on behalf of Anaqua Springs HOA, and the prefiled direct testimony of Brad Jauer (Interchange Filing No. 512) on behalf of Jauer, refer to a route proposed by Anaqua Springs HOA and Jauer that involves modifications to Route R1. The testimony uses different nomenclature for the proposed modifications (e.g., “Route R1 Modified” or “modified Route R1”), but appear to refer to the same proposed modifications to CPS Energy’s routing, which are described in the testimony of Mr. Anderson.

In SOAH Order No. 9, the Administrative Law Judges (ALJs) struck the testimony regarding these modifications. Therefore, CPS Energy does not present an extended argument at this time. CPS Energy does note, however, that testimony regarding modified Route R1 has no relevance under Tex. R. Evid. 402 to CPS Energy’s application in the proceeding and, therefore, it also would object under Tex. R. Evid 402 to the admission of all testimony of Mark Anderson, Sunil Dwivedi, Steve Cichowski, and Brad Jauer for the purpose of supporting modifications to Route R1 as viable routing to be considered in this proceeding. At this time, CPS Energy notes these objections to this testimony simply to preserve them.

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II. OBJECTIONS TO OTHER TESTIMONY

In regard to all other intervenor testimony, including that by Anaqua Springs HOA and Jauer unrelated to their proposed modifications to Route R1, CPS Energy presents its objections in the chart below.

Sponsoring Party	Witness	Page:Line	Basis for Objection
Anaqua Springs HOA	Mark Anderson (Interchange Filing No. 564)	11:16 17:1-5	CPS Energy objects to, and moves to strike the testimony “and reducing the cost by \$1.78 million” as well as the entirety of page 17, lines 1-5. No proper predicate has been shown for it and, thus, it is inadmissible under Tex. R. Evid. 602. Moreover, the methodology employed by Mr. Anderson to determine these costs is not the methodology used in the application and, therefore, these estimations lack any reliable foundation for comparison purposes and are not relevant. Accordingly, they are also inadmissible under Tex. R. Evid. 402 and 403.
Anaqua Springs HOA	Mark Anderson (Interchange Filing No. 564)	21:7-8	CPS Energy objects to, and moves to strike the testimony “In addition, the roadway which Segment 54 follows is likely to be subject to lane additions” as there is no predicate for this testimony. Accordingly, this testimony is speculation and is inadmissible under Tex. R. Evid. 602.
Anaqua Springs HOA	Lauren Pankratz (Interchange Filing No. 518)	All	CPS Energy objects to all of Dr. Pankratz’s testimony to the extent it purports to address anything beyond her personal concerns. Dr. Pankratz was not tendered as an expert witness and, although she is a doctor, there has been no predicate demonstrating she has expertise

Sponsoring Party	Witness	Page:Line	Basis for Objection
			<p>on the impact, if any, on human health from electric and magnetic fields (EMF) emitted by high voltage transmission lines. Nor has her testimony been shown to meet the requirements for lay opinion testimony under Tex. R. Evid. 701. Accordingly, all of her testimony related to health concerns from EMF may be admitted only as an expression of her personal concerns and not as the opinions of an expert or lay witness. See Tex. R. Evid. 701 and 702.</p>
<p>Anaqua Springs HOA</p>	<p>Sunil Dwivedi (Interchange Filing No. 502)</p>	<p>3:17-18</p>	<p>CPS Energy objects to, and moves to strike, the testimony “Construction sites can seem like attractive playscapes for children, and a transmission tower can seem like something fun to try to climb.” While Dr. Dwivedi may share his concerns, he may not offer statements of expert opinion or fact without a proper predicate, and this testimony is offered as a statement of fact or expert opinion for which no proper predicate has been established. Moreover, this testimony is purely speculation. Pursuant to Tex. R. Evid. 602, 701, and 702, this testimony is not admissible.</p>
<p>Anaqua Springs HOA</p>	<p>Steve Cichowski (Interchange Filing No. 590)</p>	<p>20:20-21</p>	<p>CPS Energy objects to, and moves to strike, the testimony “there is no definitive answer to the question of the effects, if any, of electromagnetic fields on children,” as there has been no showing or predicate demonstrating that he has expertise on the impact, if any, on human health from EMF. Nor</p>

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			has his testimony been shown to meet the requirements for lay opinion testimony. Accordingly, his testimony related to health concerns from EMF is not admissible See Tex. R. Evid. 602, 701, and 702.
Anaqua Springs HOA	Steve Cichowski (Interchange Filing No. 590)	21:5 – 22:15	CPS Energy objects to, and moves to strike all of this testimony, as it is speculative, lacks any predicate, is not based upon personal knowledge, mischaracterizes the record, and is not relevant. Mr. Cichowski purports to offer testimony describing communications, meetings, and discussions of which he was not a part and has no personal knowledge regarding. He mischaracterizes, in an inflammatory and entirely unsupported manner, CPS Energy’s actions (see, e.g., his characterization of CPS Energy as “strong-arming,” “silencing,” using its power, etc.). In fact, the landowner requesting the modifications and on whose land the modifications were made has submitted testimony stating “I would like to express my appreciation for the time and effort that CPS Energy put into developing the various modifications that were necessary across the Companies' tracts.” (Testimony of Tom Dreiss, p. 8, lines 13-15)(Interchange Filing No. 557). This testimony of Mr. Cichowski is not admissible pursuant to Tex. R. Evid. 602.

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Jauer/BVJ	Brad Jauer (Interchange Filing No. 512)	4:17-18	CPS Energy objects to, and moves to strike, “This proposal would cause irreparable damage to the value of ALL of our properties.” The witness has not been demonstrated to be an expert on property values and no predicate has been established for this testimony. While a property owner may be allowed to testify as to the value of their own property, they cannot testify to property values in general, absent a showing of qualification/expertise. Further, this testimony is speculative. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602, 701, and 702.
San Antonio Rose Palace/Strait Promotions	Jason Buntz (Interchange Filing No. 515)	10:27-28	CPS Energy objects to, and moves to strike, “CPS Energy and Power Engineers dismissed the importance of the Scenic Loop - Boerne Stage - Toutant Beaugard Historic Corridor” as it mischaracterizes the record and is speculative. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602.
San Antonio Rose Palace/Strait Promotions	Jason Buntz (Interchange Filing No. 515)	17:5-7	CPS Energy objects to, and moves to strike, “CPS Energy and Power Engineers establish a methodology that they claim they will follow in their evaluation and then proceed to completely ignore that methodology.” This testimony mischaracterizes the record and is speculative. Mr. Buntz cannot testify to the motives or actions of CPS Energy or POWER Engineers in conducting their

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			analysis, and his testimony is not supported by the record. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602.
San Antonio Rose Palace/Strait Promotions	Jason Buntz (Interchange Filing No. 515)	18:30-32	CPS Energy objects to, and moves to strike, “The reader is to apparently infer that because there are no National Monuments in the study area, and one would not be able to see the transmission line from Interstate 10, that there are no Community Values present in the study area for the project to impact.” This testimony mischaracterizes the record and is speculative. Mr. Buntz cannot testify to the motives or actions of CPS Energy or POWER Engineers in conducting their analysis, and his testimony is not supported by the record, which demonstrates that CPS Energy and POWER Engineers documented a wide array of community values. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602.
Clearwater Ranch	Max and Peggy Garoutte	10:8 – 11:2	CPS Energy objects to, and moves to strike all of the identified testimony. There has been no showing or predicate demonstrating that the witness has expertise on the impact, if any, on human health from EMF. Nor has this testimony been shown to meet the requirements for lay opinion testimony. Accordingly, the testimony related to health concerns from EMF is not admissible. See Tex. R. Evid. 602, 701, and 702. Similarly, the witness has not been demonstrated to be an

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			<p>expert on property values and no predicate has been established for testimony related to property values. While a property owner may be allowed to testify as to the value of their own property, they cannot testify to property values in general, absent a showing of qualification or expertise. Further, this testimony is speculative and appears to be based upon hearsay. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602, 701, 702, and 802.</p>
Robert Bernsen	Robert Bernsen (Interchange Filing No. 558)	Page 3; Attached Exhibit 1	<p>CPS Energy objects to, and moves to strike, “It has come to my attention that an additional 19 habitable structures will be built along segment 17 that appear to be within the 300 ft. threshold (see Exhibit A).¹ If the attached exhibit holds true, there will be many more additional homes built in three later phases that may also be within 300 ft. of Segment 17” and Exhibit 1 to Mr. Bernsen’s testimony. While CPS Energy hesitates to object to documents offered by a self-represented litigant in good faith, this testimony and the document attached clearly lack any predicate, and both are clearly hearsay or based upon hearsay. Accordingly, this testimony and exhibit are not admissible pursuant to Tex. R. Evid. 602, 802, and 901. To the extent the testimony and document are not offered for the truth of the matter asserted, however, but just as the</p>

¹ Although the testimony refers to “Exhibit A” the document attached is marked as “Exhibit 1.”

Sponsoring Party	Witness	Page:Line	Basis for Objection
			basis of Mr. Bernsen’s awareness of the growth and development in the area and his concerns related to such, CPS Energy does not object for that limited purpose.
Steven Gomez Herrera	Steven Gomez Herrera (Interchange Filing No. 565)	2:27-32	CPS Energy objects to, and moves to strike, the testimony “The California Department of Health concluded that electromagnetic fields (EMF) are responsible for increase of childhood leukemia, Lou Gehrig’s and miscarriage in a 2002 report.” This testimony is clearly hearsay and Mr. Herrera has not been demonstrated to be an expert in regard to the impact, if any, of EMF. Nor has the witness been shown qualified to offer lay opinion testimony in regard to EMF. Therefore, pursuant to Tex. R. Evid. 602, 701, 702, and 802, this testimony is not admissible.
Brittany Sykes	Brittany Sykes (Interchange Filing No. 568)	2:29 – 3:4; attached Exhibit A	CPS Energy objects to, and moves to strike, the testimony “However, it has come to the attention of the Serene/Scenic Hills subdivision that there is a new subdivision, Scenic Crest, that is currently under construction. The unit currently under construction appears to have 19 additional habitable structures located within 300 ft of Segment 17 (see Exhibit A). However, as you can see on Exhibit A, there will be many more additional homes built in later units that will also be within 300 ft of Segment 17.” As with Mr. Bernsen’s testimony, CPS

Sponsoring Party	Witness	Page:Line	Basis for Objection
			<p>Energy hesitates to object to documents offered by a self-represented litigant in good faith. However, this testimony and the document attached clearly lack any predicate, and both are clearly hearsay or based upon hearsay. Accordingly, this testimony and exhibit are not admissible pursuant to Tex. R. Evid. 602, 802, and 901. To the extent the testimony and document are not offered for the truth of the matter asserted, however, but just as the basis of Ms. Sykes' awareness of the growth and development in the area and her concerns related to such, CPS Energy does not object for that limited purpose.</p>
Steve Cichowski	Steve Cichowski (Interchange Filing No. 582)	8:17-21	<p>CPS Energy objects to, and moves to strike, “A recent study in the Journal of Real Estate Research by College of Charleston assistant professors Chris Mothorpe and David Wyman, found that vacant lots adjacent to high-voltage transmission lines sell for 45% less than equivalent lots not located near transmission lines. Non-adjacent lots still located within 1,000 feet of transmission lines sell at a discount of 18%.” The witness has not been demonstrated to be an expert on property values and no predicate has been established for this testimony. While a property owner may be allowed to testify as to the value of their own property, they cannot testify to property values in general, absent a demonstration of qualification/expertise. Further,</p>

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			this testimony is speculative. Thus, this testimony is not admissible pursuant to Tex. R. Evid. 602, 701, and 702.
Steve Cichowski	Steve Cichowski (Interchange Filing No. 582)	14:23 – 15:1	CPS Energy objects to, and moves to strike “CPS is a governmental entity that used its leverage and power to silence the voice of one of the most influential landowners in this proceeding.” This testimony lacks any predicate, is not based on personal knowledge, mischaracterizes the record, and is not relevant. Mr. Cichowski offers testimony describing discussions of which he was not a part and has no personal knowledge regarding. He mischaracterizes, in an inflammatory and entirely unsupported manner, CPS Energy’s actions. In fact, the landowner requesting the modifications and on whose land the modifications were made has submitted testimony stating “I would like to express my appreciation for the time and effort that CPS Energy put into developing the various modifications that were necessary across the Companies' tracts.” (Testimony of Tom Dreiss, p. 8, lines 13-15) (Interchange Filing No. 557). This testimony of Mr. Cichowski is not admissible pursuant to Tex. R. Evid. 602.
Steve Cichowski	Steve Cichowski (Interchange Filing No. 582)	20:7 – 22:21	CPS Energy objects to, and moves to strike, this testimony as irrelevant. Mr. Cichowski asserts constitutional challenges and challenges to the Commission’s

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			rules. These are not issues for this proceeding and such testimony is entirely lacking in relevance. Therefore, it is not admissible, pursuant to Tex. R. Evid. 402.

II. CONCLUSION

CPS Energy requests that the above objections be sustained and that the testimony in issue either be stricken or be admitted for limited purposes only, whichever has been requested, as noted above.

Respectfully submitted,

/s/ Craig Bennett

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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 SOAH Order No. 3.

/s/ Craig Bennett

Craig R. Bennett